11-688

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 150.

SMEDLEY DARLINGTON, PLAINTIFF IN ERROR,

vs.

THE COUNTY OF JACKSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED JUNE 20, 1877.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the western district of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the April term, 1877, thereof, between Smedley Darlington, plaintiff, and the County of Jackson, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said Smedley Darlington, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

Issued at office in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—

A. KREKEL, *Judge.*

2 *Return to writ.*

UNITED STATES OF AMERICA,
Western District of Missouri, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, together with all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of said circuit court, at the city of Jefferson, this thirteenth day of June, A. D. 1877.

[SEAL.] H. C. GEISBERG, *Clerk.*

(Indorsed:) No. 908. United States circuit court, western district of Missouri. Smedley Darlington vs. Jackson County. Writ of error to the circuit court of the U. S. for the west. dist. of Missouri.

3 The United States of America to the County of Jackson, in the State of Missouri, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the

second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the western district of Missouri, wherein Smedley Darlington is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Arnold Krekel, one of the judges of the circuit court of the United States in and for the western district of Missouri, this eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

A. KREKEL, *Judge.*

4 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

We hereby acknowledge due service of the within citation this ninth day of May, A. D. 1877.

GAGE & LADD,
Attorney for Defendant in Error.

(Indorsed:) United States circuit court, western district of Missouri. Smedley Darlington vs. Jackson County. Citation.

5 UNITED STATES OF AMERICA,
Western District of Missouri, set:

In the circuit court of the United States in and for said district.

Be it remembered that heretofore, at a regular stated term of the said circuit court of the United States in and for the western district of Missouri, begun and held at the city of Jefferson, in said district, on the third Monday, being the 16th day of April, A. D. 1877, the following proceedings were had in this case on the 20th day of April, in said last-mentioned year, to wit:

Petition filed.

SMEDLEY DARLINGTON
vs.
JACKSON COUNTY. } 908.

This day comes the above-named plaintiff by John B. Henderson, esq., his attorney, and, by leave of court, files his petition against the defendant above named.

Def't appears & files dem'r.

And comes also the defendant by its attorney, John C. Gage, esq., and enters its voluntary appearance to said petition, and, by leave of court, files a demurrer thereto.

And said petition so filed as aforesaid is in words and figures following, to wit:

Petition.

In the circuit court of the United States for the western district of Missouri, May term, 1877.

SMEDLEY DARLINGTON, PLAINTIFF,
vs.
JACKSON COUNTY, IN THE STATE OF MISSOURI, defendant.

The plaintiff respectfully represents that he is a citizen of the
6 State of Pennsylvania, and that defendant, being a public corporation, composed of citizens of Missouri, is a citizen of said State of Missouri.

Plaintiff says further that defendant on the 20th day of May, A. D. 1873, by its writing obligatory of the last named date, called and known as Jackson County bond, No. 32, signed by J. B. Yager, presiding justice of the county court of said county, and attested by E. R. Hickman, clerk of the county court of said county, and sealed with the seal of the county court of said county, acknowledged itself indebted and firmly bound to the Wyandotte, Kansas City and Northwestern Railway Company, or bearer, in the sum of one thousand dollars, which sum the said defendant, in behalf of Kaw Township, in said county of Jackson, promised to pay to said railrway company, or bearer, at the Ninth National Bank, in the city and State of New York, on the 20th day of May, 1903, together with interest thereon from the date thereof at the rate of seven per cent. per annum, which interest should be payable semi-annually, to wit, on the first days of January and July of each year thereafter on the presentation and delivery of the coupons for interest thereto attached at said Ninth National Bank aforesaid. A copy of said bond is hereby attached, marked A, and made a part of this petition.

Plaintiff says that the said bond, and also one hundred and forty-nine other bonds of the same amount, and of the same date, tenor, and effect as the bond above described, the said bonds being numbered from 1 to 150 respectively, were issued and delivered to said railway company in full payment of subscription of one hundred and fifty thousand dollars heretofore subscribed to the capital stock of the said railway company by the said defendant in behalf of said Kaw Township, in said county, and
in pursuance of the statutes of the State of Missouri authorizing
7 said subscription and the issue and delivery of said bonds; and also, in pursuance and by authority of an election duly held in said township on March 18, 1873, according to the law in such cases made and provided; and also, in pursuance of an order of the county court of said county of Jackson, made and entered of record at the May term of said court in the year 1873.

Plaintiff avers that the said railroad company, at the time of the subscription of said stock and the delivery of said bonds, was duly incorporated and existing as a railroad company in the State of Missouri, and under and by virtue of the laws of said State.

Plaintiff further says that before the issue and delivery of said bonds the defendant caused the same to be presented to the auditor of the State of Missouri for registration, as required by law in such cases. And the said auditor, to wit, Geo. B. Clark, did then, to wit, on the 21st day of May, 1873, cause to be endorsed on said bond, and on each of said bonds, a certificate by him signed and sealed with the great seal of the said State, by which it is alleged and declared that "all the condi-

tions of the laws of this State (Missouri) have been complied with in the issue of the within bond; that the conditions of the contract under which the same was ordered to be issued have also been complied with, and that this bond (and each of said bonds) has been duly registered in this office under the provisions of 'An act to provide for the registration of bonds issued by counties, cities, and incorporated towns, and to limit the issues thereof,' approved March 30, 1872, and the amendment to said act, approved March 17, 1873."

And plaintiff avers that said bond, with the coupons thereto attached, and all the other bonds of said issue, as aforesaid, were delivered to said company for value as aforesaid; that said county, for the benefit of said township, accepted and received, and yet holds a certificate of
8 stock in said railway company for said bonds; that defendant thereafter caused the necessary taxes to be collected from year to year in said township, and the people thereof voluntarily paid the same for three years after the negotiation and delivery of said bonds; that said railway company has fully completed and is now successfully operating its railroad from Wyandotte to the town of Lexington, in the State of Missouri, through the entire length of Kaw Township, as contemplated, and also through the entire length of Jackson County, and that defendant has annually collected, and still collects, for the benefit of said township, the State and county taxes on the said railway company, which are due and collectable in the county of Jackson.

And plaintiff says that by interest coupon detached from said bond, and which was a part thereof and now hereto attached, the defendant promised to pay to the bearer thereof on the 1st day of July, 1876, at the Ninth National Bank, thirty-five dollars, it being six months' interest on bond No. 32, issued to the said Wyandotte, Kansas City and Northwestern Railway Company in behalf of Kaw Township; that he is the owner and bearer of said coupon for value, and that the same was duly presented for payment at the said bank at the time of the maturity thereof, and payment was then demanded, and refused by order and direction of the defendant; wherefore plaintiff brings his suit and prays judgment for the amount of said coupon, together with interest, damages, and costs.

And plaintiff, for further cause of action, says that defendant, at the time of issuing the said bond, also issued other bonds, the numbers of which are hereinafter named; that said bonds were all issued under the same circumstances, for the same purpose, by virtue of the same laws and authority, and for the same consideration as hereinbefore stated,
9 and they were registered and negotiated in the manner and for the purpose hereinbefore described, and delivered to the same railroad company for the stock subscribed as aforesaid. And the plaintiff says he is the owner and holder of the bonds and coupons hereinafter named for value.

10 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 15 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer

thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 140 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 139 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 9 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 61 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 75 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

11 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 4 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 44 issued to the

aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 142 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 40 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 150 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 58 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

12 And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 145 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 147, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said

bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 26, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 57, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 54, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 27, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

13 And plaintiff says, that by interest-coupon hereto attached, being a part of thefollowing named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 133, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 53, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded was refused by order of de-

fendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 76, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 30, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 28, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 131, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

14 And the plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 56, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 148, issued to the aforesaid railway company in behalf of said township, which said coupon t the maturity thereof the plaintiff presented for payment at said bank, nd payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said oupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 17, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 24, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 134, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 69, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

15 And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 59, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 66, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer

thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 52, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 130, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 25, issued to the aforesaid railway company in behalf of said towhship, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 31, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

16 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 132, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 18, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 70, issued to the

aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 149 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 3, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 11, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

17 And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 45, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 47, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 74, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, where-

fore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 143, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 41, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 55, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

18 And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 46, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 48, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 36, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 141, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 86, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 10, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

19 And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 8, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 71, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 144, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer

thirty-five dollars on the first day of July, 1876, at the Ninth National Bank aforesaid, for six months' interest on bond No. 146, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of the defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 17, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 92, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

20 And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 94 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 96 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 102 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 101 is-

sued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 89 issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 88 issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues and prays judgment for the amount of said coupon, with interest, damages, and costs.

21 And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 103, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant; wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 104, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant; wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 143, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded was refused by order of defendant; wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 144 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at

said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 105 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 150 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

22 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 41 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 148 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgement for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 110 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest-coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National bank aforesaid, for six months' interest on bond No. 113 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant,

wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 108 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 90 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

23 And plaintiff says, that by interest coupons hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 83 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages. and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 31 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 40 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 133 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 91 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 93 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

24 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 95, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 128, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 100, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 87, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer

thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 129, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 18, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

25 And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 107 issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 145 issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 106 issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 85 issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 130, issued

to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 149 issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

26 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 30, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 147, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 146, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 82, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 114, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said

bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 132, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

27 And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 97, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 99, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 24, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 81, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 25, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant,

wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 27, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

28 And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 131, issued to the aforesaid railway company in behalf of said township; which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 116, issued to the aforesaid railway company in behalf of said township; which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 26, issued to the aforesaid railway company in behalf of said township; which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 98, issued to the aforesaid railway company in behalf of said township; which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 70, issued to the aforesaid railway company in behalf of said township; which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 84, issued to the aforesaid railway company in behalf of said township; which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

29 And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 3, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 11, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 45, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 47, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 86, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer

thirty five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 28, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

30 And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 117, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 115, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 124, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 121, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 119, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 141, issued

to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

31 And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay bearer thirty-five dollars on the first day of January 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 8, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 9, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says that, by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 77, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 71, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 123, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 75, issued to the aforesaid railway company in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of de-

fendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

32 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 4, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 44, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 46, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 48, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 139, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following-named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 36, issued to the aforesaid railway company, in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

33 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 32, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 15, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages, and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 122, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 120, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 118, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 140, issued to the aforesaid railway company, in behalf of said township, which said coupon at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

34 And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to

pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 10, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 76, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 111, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty-five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 109, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

And plaintiff says, that by interest coupon hereto attached, being a part of the following named bond, defendant promised to pay to bearer thirty five dollars on the first day of January, 1877, at the Ninth National Bank aforesaid, for six months' interest on bond No. 112, issued to the aforesaid railway company in behalf of said township, which said coupon, at the maturity thereof, the plaintiff presented for payment at said bank, and payment being demanded, was refused by order of defendant, wherefore plaintiff sues, and prays judgment for the amount of said coupon, with interest, damages and costs.

35 And plaintiff says that the total amount of said coupons is five thousand two hundred and eighty-five dollars, for which amount, together with interest, damages, and costs, he prays judgment.

HENDERSON & SHIELDS,
Attorneys for Plaintiff.

And said exhibit marked A, hereinbefore mentioned, is in words and figures following, to wit:

Copy of bond.

A.

No. 128. UNITED STATES OF AMERIC $1,000

STATE OF MISSOURI, COUNTY OF JACKSON.

Issued in behalf of Kaw Township, pursuant to the laws of the State of Missouri, to aid in the construction of the Wyandotte, Kansas City & Northwestern Railway.

Know all men by these presents, that the county of Jackson, in the State of Missouri, acknowledges itself indebted and firmly bound to the Wyandotte, Kansas City and Northwestern Railway Company, or bearer, in the sum of one thousand dollars, which sum the said county of Jackson, in behalf of Kaw Tw'p, in said county of Jackson and State of Missouri, promises to pay to the said Wyandotte, Kansas City and Northwestern Railway Company or bearer, at the Ninth National Bank, in the city and State of New York, on the twentieth day of May, A. D. 1903, together with the interest thereon, from the date hereof, at the rate of seven per cent. per annum, which interest shall be payable semi-annually on the presentation and delivery of the coupons for interest hereto attached, at said Ninth National Bank, in the city and State of New York.

36 This bond is issued in payment of a subscription of one hundred and fifty thousand dollars subscribed to the capital stock of the said Wyandotte, Kansas City & Northwestern Railway Company by said Jackson County in behalf of said Kaw Township, and in pursuance of an act of the general assembly of the State of Missouri, entitled, "An act to facilitate the construction of railroads in the State of Missouri," approved March 28, A. D. 1868. The said subscription was authorized by an election duly held in said township pursuant to said act, on March 18th, A. D. 1873, and the issue of bonds in payment thereof was directed by an order of the county court of said Jackson County, Missouri, made at the May term, 1873, and in pursuance of said order this bond is issued.

In testimony whereof the county of Jackson has executed this bond by the presiding justice of the county court of said county, under the order thereof, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same, and affixing the seal of said court. This done at the city of Independence, county of Jackson, State of Missouri, this twentieth day of May, A. D. 1873.

[SEAL.] (Signed) J. B. YAGER,
Presiding Justice of the County Court of Jackson County, Missouri.

Attest.

E. R. HICKMAN,
Clerk of the County Court of Jackson Co., Missouri.

Coupon.

Copy of coupon.

$35.00. CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI.

County of Jackson promises to pay to bearer thirty-five dollars

37 on the first day of July, A. D. 1876, at the Ninth National [Bank] in the city and State of New York, for six months' interest on bond No. 128, issued to the Wyandotte, Kansas City and Northwestern Railway Company in behalf of Kaw Township.

JAMES B. YAGER,
Presiding Justice of the County Court of Jackson County, Mo.

Attest.

E. R. HICKMAN,
Clerk of the County Court of Jackson County, Mo.

Certificate of registration.

I, Geo. B. Clark, State auditor of the State of Missouri, do hereby certify that all the conditions of the laws of this State have been complied with in the issue of the within bond, that the conditions of the contract under which the same was ordered to be issued have also been complied with, and that this bond has this day been duly registered in this office under the provision of "An act to provide for the registration of bonds issued by counties, cities, and incorporated towns, and to limit the issue thereof," approved March 30th, 1872, and the amendments to said act approved March 17, 1873.

In witness whereof I have hereto set my hand and affixed my official seal. Done at office, in the city of Jefferson, this 21st day of May, A. D. 1873.

[SEAL.] (Signed) GEO. B. CLARK,
State Auditor.

And said demurrer to plaintiff's petition, so filed as aforesaid, is in words and figures as follows, to wit:

Demurrer.

In the United States circuit court, western district of Missouri, April term, 1877.

38 SMEDLEY DARLINGTON, PLAINTIFF,
vs.
THE COUNTY OF JACKSON, DEFENDANT.

Defendant demurs to the petition of plaintiff herein, for the following reasons, to wit:

First. Because said petition does not state facts sufficient to constitute a cause of action.

Second. Because it appears from said petition that the county court of Jackson County had no power or authority to make or issue said bonds or coupons, and that the same and each of them are null and void.

GAGE AND LADD,
Attorneys for Defendant.

And afterwards, at said last-mentioned regular stated term of said circuit court, the following further proceedings were had in this case, on the 24th day of April, A. D. 1877, to wit:

Demurrer sustained.

SMEDLEY DARLINGTON
vs.
JACKSON COUNTY. } 908.

This day come the parties, by their attorneys, and the demurrer to the the petition of plaintiff filed by said defendant is submitted to the court, and being now fully advised concerning the premises the court doth order that said demurrer be sustained.

And the plaintiff refusing to amend his petition, and electing
39 to abide by the same, the defendant moves for judgment upon the pleadings. It is therefore considered by the court that the defendant, the County of Jackson, go hence without day and recover of the plaintiff, Smedley Darlington, its costs herein expended, and have execution therefor.

And afterwards, on the 8th day of May, A. D. 1877, it being in vacation of said circuit court, the following further proceedings were had in this case, to wit:

Writ of error allowed.

SMEDLEY DARLINGTON
vs.
JACKSON COUNTY. } 908.

This day there is presented to the honorable Arnold Krekel, judge, a writ of error to reverse the decision and judgment of this court in the above cause, and a citation to the defendant, and thereupon said writ is allowed and said citation signed. It is ordered that a bond for appeal be filed herein.

And afterwards, on the 12th day of June, A. D. 1877, it being in vacation of said circuit courts the following further proceedings were had in this case, to wit:

Bond given.

SMEDLEY DARLINGTON
vs.
JACKSON COUNTY.

This day there is presented to the honorable Arnold Krekel,
40 judge, a bond for appeal in the above cause, and thereupon said bond is approved and ordered filed.

And said bond, so filed as aforesaid, is in words and figures following, to wit:

Bond.

Know all men by these presents that we, John B. Henderson, as principal, and George H. Shields, as surety, are held and firmly bound unto the County of Jackson, in the State of Missouri, in the full and just sum of five hundred dollars, to be paid to the said County of Jackson, in the State of Missouri, to which payment, well and truly to be made, we

bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this the eighth day of May, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas lately at the April term, A. D. 1877, of the circuit court of the United States for the western district of Missouri, in a suit depending in said court between Smedley Darlington, plaintiff, and the County of Jackson, in the State of Missouri, defendant, judgment was rendered against the said Smedley Darlington, and the said Smedley Darlington having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The County of Jackson, in the State of Missouri, citing and admonishing it to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October next:

Now the condition of the above obligation is such that if the
41 said Smedley Darlington shall prosecute said writ to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and virtue.

JOHN B. HENDERSON. [SEAL.]
GEO. H. SHIELDS. [SEAL.]

Sealed and delivered in presence of—
WM. H. BLISS.

(Endorsed:)
App'd:

KREKEL, *Judge.*

42 UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western district of Missouri, do hereby certify that the writing hereto annexed is a true and complete transcript of the record and proceedings in case No. 908, of Smedley Darlington, plaintiff, against Jackson County, in the State of Missouri, defendant, as fully as the same remains on file and of record in said case in this office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at office, in the city of Jefferson, in said district, this 13th day of June, A. D. 1877.

[SEAL.] H. C. GEISBERG,
Clerk.

(Indorsement on cover:) No. 150. Smedley Darlington, plaintiff in error, vs. The County of Jackson. W. Missouri C. C. U. S. Filed 20th June, 1877.

Supreme Court of the U. S.

OCTOBER TERM, 1879.

ELISHA FOOTE,
Plaintiff in error.
vs.
THE COUNTY OF PIKE,
IN THE STATE OF MISSOURI,
Defendant-in-error.
} *No. 134.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

SMEDLEY DARLINGTON,
Plaintiff-in-error.
vs.
THE COUNTY OF JACKSON,
IN THE STATE OF MISSOURI,
Defendant-in-error.
} *No. 150.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF AND ARGUMENT OF PLAINTIFFS-IN-ERROR.

HENDERSON & SHIELDS,
Attorneys for Plaintiffs-in-Error.

Supreme Court of the U. S.

OCTOBER TERM, 1879.

ELISHA FOOTE,
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Defendant in error.
No. 150.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT OF FACTS.

Both of these suits are brought to collect interest coupons on what are known, in Missouri, as Township bonds.

In the case first named, No. 134, the bonds were issued by Pike County, Missouri, for the benefit of Calumet Township in said County, payable to the Clarksville & Western Railroad Company or bearer, in the usual commercial form The bond recites, that it "is issued pursuant to an order of the County Court, of said County of Pike, and by authority of an act of the General Assembly of the State of Missouri, entitled, 'An act to facilitate the construction of railroads in the State of Missouri,' and approved on the 23d day of March, A. D. 1868, and authorized by a vote of more than two-thirds of the votes of said Township." The petition avers, that the said vote was taken at a special election duly held for that purpose. It is further averred that the bonds sued on were issued, negotiated and delivered to the Railroad Company, for value, and in payment of a stock subscription made to the capital stock of said Railroad Company, and that the County received stock certificates therefor and repeatedly voted thereon for Directors of the Company, and in the management and control of its affairs.

It is also averred that the County Court of the County levied and collected taxes from the taxpayers of the Township for the several years extending from 1871 to 1876 inclusive, and the coupons maturing on said bonds were paid from the date of the bonds up to, and inclusive of the 1st day of January, 1876.

The Plaintiff claims to be an innocent holder, for value, of the coupons sued on, and prays judgment therefor.

This suit was made returnable to the September term of the Court in 1876, and during the term, *to-wit*: on February 9th, 1877, the Defendant filed a general demurrer to the petition, and the demurrer was sustained, and judgment entered for the Defendant, on the authority of the case of Harshman vs. Bates County, decided by this Court in May, 1876. (See 92 U. S. R. p. 569.) In the decision upon the

demurrer, and the judgment had thereon, the Judges, Hon. John F. Dillon and Hon. Samuel Treat, were opposed in opinion, and a division is by them certified as follows:

1st. Whether the petition sets forth a legal cause of action?

2d. Whether the demurrer ought to be sustained?

3d. Whether the Defendant had authority to subscribe the stock, although two-thirds of the qualified voters of the Township had actually voted therefor?

4th. Whether the Plaintiff, being a *bona-fide* holder, for value, the Defendant is not estopped by the recitals in the bonds, from denying their validity, under the Constitution and laws of Missouri?

6th. Whether the Defendant is not estopped by the collection of taxes, the payment of coupons, the acceptance of stock certificates and voting at elections, from disputing the validity of said obligations, inasmuch as the bonds and coupons are negotiable in form, and have passed upon the money market from hand to hand, in full reliance that they were valid under the decisions of the Supreme Court of Missouri?

The Railroad Company receiving these bonds is now known as the St. Louis, Keokuk & Northwestern. The road extends from Keokuk, Iowa, to Dardenne, Missouri, where it intersects the St. Louis, Kansas City & Northern, and is one of the best roads in Missouri.

In the second case, No. 150, the suit is by the Plaintiff in error against Jackson County, Missouri, brought on matured coupons detached from Township bonds, issued and delivered by said County, in behalf of Kaw Township therein, the same Township in which Kansas City is situated, payable to the Wyandotte, Kansas City & Northwestern Railroad Company or bearer. The bonds were issued in payment of stock subscribed by said County, in behalf

of Kaw Township, to said Railroad Company, pursuant to an order of the County Court and according to the provisions of the said Act "to facilitate the construction of railroads in the State of Missouri," approved March 23, 1868.

The bonds are dated May 20, 1873; and having therefore been issued after the passage of what is known as the Registration Act of Missouri, they were "previous to negotiation" presented to the State Auditor for registration, and by him registered and endorsed as required by law. In his certificate of registration, endorsed on each bond, under the seal of the State, it is certified, "that all the conditions of the laws of this State (Missouri,) have been complied with, in the issue of the within bond; that the conditions of the contract, under which the same was ordered to be issued, have also been complied with, and that this bond (and each of said bonds) has been duly registered in this office, under the provisions of 'an act to provide for the registration of bonds issued by Counties, Cities and incorporated towns, and to limit the issue thereof' approved March 30, 1872, and the amendment to said act, approved March 17, 1873."

The petition avers that the bonds and coupons were delivered to the Railr ad Company for value, in payment of the stock subscription duly made for said Township; that the County, for said Township, accepted, and yet holds, a stock certificate in the Railroad Company for said bonds; that taxes were annually levied to pay the coupons thereon, and the people of the Township voluntarily paid the same for three years after their negotiation and delivery; that the Railroad Company has fully completed its road, through the entire length of Kaw Township, through Jackson County, and from Wyandotte to Lexington, Mo., its full length as contemplated, and the same is now being successfully operated; and that the County has annually

collected and still collects the taxes on the Railroad Company, for the benefit of said Township. It is also averred that the issue of the bonds was authorized by two-thirds of the qualified voters of the Township.

This suit was brought to the April term, 1877, of the Circuit Court in the Western District of Missouri. A general demurrer was interposed by Defendant, to the effect, that Township bonds were invalid, according to the decision of this Court in the Harshman case, decided in May, 1876. The demurrer was sustained and judgment given for the Defendant; and the case is here upon a writ of error.

HISTORY OF LEGISLATION AND JUDICIAL DECISION IN MISSOURI, CHRONOLOGICALLY STATED.

The Constitution of Missouri, adopted in 1820, contained the following provision:

"ART. VII. Internal improvement shall forever be encouraged by the government of this State, and it shall be the duty of the General Assembly, as soon as may be to make provision by law for ascertaining the most proper objects of improvement, in relation both to roads and navigable waters; and it shall also be their duty to provide by law, for a systematic and economical application of the funds appropriated to those objects."

The first railroad charter "to incorporate the Louisiana & Columbia Railroad Company" was adopted on January 27, 1837. It contained the following provisions:

"SEC. 16. It shall be lawful for the County Courts of the respective Counties on said road to subscribe for such portions of the stock of said Company, as they may deem proper, and upon such terms as they may agree with the Company."

"SEC. 17. When any stock shall have been subscribed for by the County, the Justices shall have a right to vote on behalf of the County at any election, and they may at any time, require of the Directors information concerning the affairs of the company."

The foregoing provisions substantially were made applicable to all subsequent railroad charters in the State, up to February 16, 1847, when the Hannibal & St. Joseph Railroad Company was incorporated. Its 4th Section adopted all the provisions of the act of 1837.

The Pacific Railroad Company, chartered on March 12, 1849; The North Missouri, chartered on March 3, 1851; The Iron Mountain, on March 3, 1851; The Platte County on February 24, 1853, contained substantially similar provisions. The Counties and towns through which these roads passed generally subscribed stock, and their bonds have been paid or renewed.

Prior to 1853, all Railroad Companies in the State were incorporated under special acts of the Legislature.

On February 24, 1853, a general act "to authorize the formation of Railroad associations" was adopted. (*Laws Mo. 1853, p. 121.*) It contained the following provisions:

"SEC. 29. It shall be lawful for the County Court of any County, and the City Council of any City, to subscribe to the capital stock of any Railroad Company, duly organized under this or any other act, in this State; and the County Court or City Council subscribing or proposing to subscribe to such capital stock, may for information, cause an election to be held, to ascertain the sense of the tax-payers of such County or such City, as to such subscription, and as to whether the same shall be paid by issues of County or City bonds, as the case may be, or by taxation."

This general railroad law passed into the revision of 1855, and constitutes section 30, of said revision.

Rev. Stat. of Mo., 1855, vol. 1, p. 427.

On January 14, 1860, this section was so amended as to read: "shall for information," instead of "may for information," thereby making it the duty of the County Court before subscribing, to submit the question to a majority vote of the tax-payers.

Session Acts, 1859-60, *p.* 88.

On March 23, 1861, this section was further amended, so as to require a submission of the question to a vote of qualified electors; "and if a majority of all the resident voters of said County or City, who are qualified to vote for County and State officers, and who shall vote at such election, shall cast their votes for subscribing said stock, then the County Court or City Council shall subscribe." etc.

The second section of this act provided that the County Court shall not subscribe the stock "unless the same has been voted for by a majority of the resident voters."

Session Acts, 1860–1, *p.* 60.

Thus stood the law until the change of the State Constitution, which took effect on July 4, 1865. It provides as follows:

"ART. 11, SEC. 14. The General Assembly shall not authorize any County, City or Town, to become a stockholder in, or to loan its credit, to any company, association or corporation unless two-thirds of the qualified voters of such County, City or Town, at a regular or special election to be held therein, shall assent thereto."

At the first session of the Legislature assembled after the adoption of the Constitution of 1865, the general railroad corporation act of the State was changed to read as follows, *to-wit*:

"SEC. 17. It shall be lawful for the County Court of any County, the City Council of any City, or the trustees of any incorporated town, to take stock for such County, City or town, or loan the credit thereof, to any Railroad Company,

duly organized under this, or any other law of the State ; *provided*, that two-thirds of the qualified voters of such County, City or town, at a regular or special election to be held therein, shall assent to such subscription."

Vol. 1, *Wagner Stat.* 1872, *p.* 305.

The next section authorizes the issue of bonds to pay the subscription when made.

Without encumbering this brief with unnecessary authorities, the assertion is made, that the Legislative, Executive and judicial authorities of the State for twelve years concurred in the construction of this provision. It was conceded by all, that the only change made by the new Constitution, on the subject of railroad subscriptions, from the law of 1861, was the requirement of a two-thirds vote instead of a bare majority of the voters of the municipality interested. The universal practice, from 1865 to 1875, when yet another Constitution was adopted, was to count the votes cast at the election held for the purpose, and if two-thirds of those *voting* at the election voted for the subscription, the subscription was made and the bonds issued.

The first act passed by the General Assembly after the adoption of the Constitution of 1865, involving an interpretation of its provisions in regard to stock subscriptions to public corporations, is "An Act amending the charter of St. Joseph," approved, December 19, 1865 ; *Laws of Mo.* 1865–6, *p.* 269,

The Act is as follows :

"So much of section 2, of the act entitled 'an act to amend the charter of the City of St. Joseph,' approved February 11, 1857, as provided, that 'propositions to subscribe stock in any railroad terminating at or near the City of St. Joseph, shall be submitted to a vote of the taxable inhabitants of said City' be, and the same is hereby repeal-

ed, and the Mayor and Council of said City, shall hereafter cause all such propositions to subscribe stock in any Railroad Company, or to the capital stock of any other incorporated Company, or to create a debt by borrowing money for any purpose whatever, to be submitted to a vote of the qualified voters of said City, and in all such cases it shall require two-thirds of such qualified voters, to sanction the same."

At the same session, March 12, 1866, (*see page 254 of same book*,) an act was approved, authorizing the town of Clarksville, to subscribe for public improvements, "after having first obtained the consent of the inhabitants, as required by the Constitution of the State."

At the same session the general railroad law was amended as already stated on page 7 of this brief, so as to make it conform strictly to the words of the Constitution.

The City Council of St. Joseph, a few days after the passage of the act of December 19, 1865, ordered an election to be held on January 13, 1866, on a proposition to issue $ 50.000 of bonds under said act. The election resulted in having 336 votes cast for the issue of the bonds, and 58 votes against it. The Mayor, who, under the ordinance, was required to sign the bonds when issued, refused to do so, on the ground that only two-thirds of those voting and not two-thirds of all the qualified voters had assented to the issue. An application for a writ of mandamus, to compel him to sign the bonds was made, and the Supreme Court of Missouri passed upon the question at its February term, 1866. The opinion is unanimous and the language used is as follows:

"The only reason given by the Mayor, for declining to sign the bonds in question, was, that he was in doubt whether the matter was to be determined by two-thirds of all the votes polled at the special election, or by two-thirds of all the voters resident in the City absolutely, whether

voting or not. We think it was sufficient that two-thirds of all the qualified voters who voted at the special election authorized for the express purpose of determining that question, on public notice duly given, voted in favor of the proposition. This was the mode provided by law for ascertaining the sense of the qualified voters of the city upon that question. There would appear to be no other practicable way in which the matter could be determined."

State ex rel. Bassett vs. Mayor of St. Joseph, 37 *Mo.* 270. (1866)

At the following October Term, 1866, the Supreme Court of Missouri passed upon a similar question

The Legislature, by an act approved March 4, 1857, had provided, that the corporate authorities of the different Cities in St. Louis County, might authorize the sale of refreshments (distilled liquors excepted) on the Sabbath, "whenever a majority of the legal voters of the respective Cities in said County, authorize them so to do."

An election was held at which a majority of the votes polled in the City of St. Louis on the question involved, and authorized the sale, but such majority was less than half of the whole vote of the City as indicated at other elections and by the vote on other questions pending at the same election.

The Court said:

"In the case of the *State ex rel. Bassett vs. Mayor of St. Joseph*, *37 Mo.* 270, when an act of the General Assembly provided that the Mayor and Council of the City should cause all propositions for creating a debt by borrowing money to be submitted 'to a vote of the qualified voters of said City,' and that in all such cases it should require 'two-thirds of the qualified voters to sanction the same,' and, it appeared that two-thirds of all the voters voting had voted in favor of the proposition, that was held to be sufficient. We think the case made here comes within

the reasoning and the principles of that decision, namely, that an election of this kind, authorized for the very purpose of determining that question, on public notice, duly given, was the mode contemplated by the Legislature as well as by the law for ascertaining the sense of the legal voters upon the question submitted, and that there could not well be any other practicable way in which such matter could be determined. And, certainly, in the absence of any evidence to the contrary, it may be presumed that the voters voting at an election so held were all the legal voters of the City; or, that all those who did not see fit to vote (if there were any) acquiesced in the action of those who did vote, and so are to be considered as equally bound and concluded by the result of the election.

State vs. Binder, 38 Mo. 450. (1866.)

On March 5, 1868, the General Assembly passed An Act limiting the creation of indebtedness in the City of St. Joseph in any one year to the amount of revenues collected, unless authorized by a majority vote of the Council and approved by the voters; "and if at such election, two-thirds or more than two-thirds of the qualified voters of said City shall vote in favor of said ordinance, the same shall thereby become valid and binding upon said City of St. Joseph."

Laws of Mo. 1868, *p. 238.*

On March 17, 1868, An Act to amend the Charter of Kansas City was approved, by which the Common Council was authorized to borrow money to pay Railroad subscriptions and for other purposes; "*Provided*, however, that every ordinance for borrowing money, &c., shall have been passed by a vote of three-fourths of all the Aldermen elect, submitted to a vote of the qualified voters and approved by two-thirds of the votes *cast* at any general or special election held in said City before such ordinance shall be in force and effect." (See same book, page 212.)

On the 25th March, 1868, An Act was approved authorizing the City of St. Louis to guarantee the bonds of the Illinois and St. Louis Bridge Company (the bridge being known as the Eads bridge at St. Louis) to the amount of four million dollars. This was a loan of credit and fell subject to the provisions of the Constitution. After providing the mode of calling the election and the period of notice to be given, the Act provides that "the vote at such election shall be by ballot and said ballots shall have either written or printed thereon the words, 'for the bridge company bonds,' or 'against the bridge company bonds.' The votes cast at such election shall be counted and certified on the poll books by the judges and returned to the City Register's office within two days after such election; and within five days thereafter the votes *as certified* shall be examined and added up in the presence of the Mayor of the City, the President of the Common Council and the City Comptroller, or any two of them, and the result certified to the Mayor; and if it shall appear that two-thirds of the qualified voters cast their votes 'for the bridge company's bonds,' then, but not otherwise, the Mayor of the City shall be authorized and it shall be his duty to guarantee the bonds of said bridge in the manner hereinbefore provided."

The 6th Section of this Act provides that in case the Company fails to pay principal or interest of these guaranteed bonds, the entire bridge and all its franchises shall by operation of law become the property of the City, subject only to the Company's mortgage to secure payment of the four million dollars.

Laws 1868, *p.* 182, sections 3 to 6.

On March 23, 1868, the General Assembly passed An Act "to facilitate the construction of railroads in the State of Missouri," (*Session Acts* 1868, *p.* 92,) which provided:

1. That on the petition of twenty-five tax-payers and residents of a municipal township, expressing a wish that the

township take stock in any company building or proposing to build a railroad into, through or near such township, and stating the amount, terms and conditions of such subscription, it became the duty of the County Court to order an election to be held in such township on the proposition; "and if it shall appear from the returns of such election, that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the County Court to make such subscription in behalf of such township according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscriptions, the County Court shall issue the bonds in the name of the County, with coupons for interest attached," etc.

2. The County Court shall from time to time levy and collect a tax on all the real estate lying within the township, sufficient to pay interest and principal of the bonds.

3. The County Treasurer is required to receive the tax from the collector and apply it to the payment of the interest and principal of the bonds.

4. Persons paying the special tax shall receive from the Collector certificates thereof, and such certificates are convertible into stock of the Company; and the County Court shall hold the stock so subscribed, in trust for the taxpayers, to be transferred to them as they become entitled to it.

5. "In all cases hereafter (March 23, 1868) where a railroad or branch railroad in this State shall be built, in whole or in part, by subscriptions to its stock by Counties, Cities or townships, the proceeds of all State and County taxes levied upon such railroad Company or branch so built, or the property thereof, shall be paid into the treasury of the counties where collected, and the County Treasurers shall apportion the same according to their several subscriptions, to such counties, cities or townships so subscrib-

ing stock, until the whole amount of such subscription is refunded to them; and such sums so appropriated shall be paid over to the county or city treasurer and applied to the payment of the interest and prinipal of the bonds issued by such county or city on account of their subscription of stock as aforesaid, if any are outstanding, and if not, it shall by them be placed to the credit of the school fund in such county, city or township." *(Laws 1868, p. 92.)*

It was under this Act that the coupons in litigation in this case were issued. A short time after the passage of this Act an election was held in Benton Township, in Linn County, Missouri, for the purpose of authorizing a subscription to the North Missouri Central Railroad Company in behalf of said Township. A two-thirds majority of the votes cast at the election were in favor of the subscription and issue of bonds. The County Court refused to make this subscription or issue the bonds. A petition was filed in the Circuit Court of the County, asking for a peremptory writ of mandamus against the County Court to compel it to subscribe to the stock in accordance with the vote, and to issue the bonds.

DECISIONS OF THE SUPREME COURT OF MISSOURI ON TOWNSHIP BONDS.

The aforesaid case was tried and appealed to the Supreme Court of the State of Missouri and decided at the October Term, 1869, as reptored in *44 Mo. 504*. The Counsel for the County Court, in the brief filed, (see page 506) insisted that the Act of March 23, 1868, was unconstitutional because:

1. The bonds which it was sought to compel the respondent (the County Court) to issue would be an indebtedness of the County and not of the Township;

2. The Township had no authority to make the bonds;

3. The Township was not a corporation nor even a *quasi* corporation and that the Act did not make the Township a corporation for any purposes whatever;

4. The bonds were to be issued in the name of the County and not of the Township;

5. The County Court was in no way the agent of the Township;

6. The Act was unconstitutional because it provided that real estate only should be taxed for the payment of bonds issued under it, thus exempting all other species of property;

7. The Legislature could only authorize such subscriptions to be paid out of general taxation, and the assessments required by the Act did not fall under the head of taxation within the meaning of the Constitution.

The following is a statement of the case taken from the the opinion of the Court:—

"The relator asks this Court to grant a peremptory writ of *mandamus*, against the respondent, and states substantiaally, that on the eighteenth day of May, 1869, at a term of the County Court in and for the County of Linn, in the State of Missouri, a petition signed by twenty-five (and more) persons, tax-payers, and residents in the municipal Township of Benton, in said County, setting forth their desire as a Township, to subscribe twenty thousand dollars to the capital stock of the North Missouri Central Railroad Company, which road was proposed to be constructed Through said township. The petition stated the terms and conditions, on which the petitioners desire the subscription should be made. It is further alleged, that on the eighteenth day of May, 1869, the County Court made, and caused to be entered on the record of its proceedings, an order for an election as prayed for in the petition, which order is set out at length; that in pursuance of said order an election was duly held, conducted as prescribed by law,

and that more than two-thirds of the qualified voters of the Township, *voting at the election*, voted in favor of the subscription; that at an adjourned term of the Court held on the 5th day of July, 1869, the Court made an order of record, making the subscription in behalf of the said Benton Township, according to the terms and conditions as set forth in the petition for the election and the order of the Court calling the same; that afterwards, at the August adjourned term of said Court, held on the 6th day of September, 1869, the N. Mo. Central R. R. Co., requested the Court to issue and deliver to said Company the bonds required under the terms and conditions of said subscription; but the Court refused, and still refuses to deliver the bonds, for the alleged reason, only, that the act under which the subscriptions was made was *unconstitutional and void*.." (See page 507.)

The return to the original writ avers "that the County Court ought not to issue and deliver the bonds, because the law under which they acted is violative of the State Constitution, and should therefore be regarded as a nullity." (Pages 507-8)

The Court proceeds to examine the act of March 23, 1868, section by section, (pp. 508 and 509,) and then uses this language: "It is now contended, that the Act is unconstitutional, because the bonds which it is sought to compel respondent to issue, under the provisions of the act, would be an indebtedness of the County and not of the Township, and that it is therefore in direct antagonism with Section 14, Article 11 of the State Constitution, which declares, 'the General Assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to, any Company, association or corporation, unless two-thirds of the qualified voters of such County, City or town at a regular or special election to be held therein, shall assent thereto"—P. 509.

It was insisted that a Township was not a municipal corporation, and that such bonds could not be issued; and to this objection the Court says:

"The Township is a legal subdivision of the County—is an organization for certain municipal purposes—but has no power of itself to make independent contracts, or to become bound in its separate capacity. The law has not invested it with that power. It forms an integral part of the County. and the County to a certain extent, controls and acts for it. In some of the States, Townships act independently, through trustees, and are capable of making valid and binding contracts; but our law has not given them that authority. I know of nothing, however, to prevent it, should the Legislature see fit to do so. * * *

"The bonds are not therefore in any sense County bonds. The subscriptions are essentially Township subscriptions, and the bonds are, to all intents and purposes, Township bonds; and the County Courts, and the Counties named, are merely made use of as agencies to effectuate and carry out the object. The law is now well settled in the United States, that the Legislature having control of the subordinate municipal organizations, and the power to enlarge or abridge their powers at pleasure, may make them the instruments in carrying out works of public improvement; and may authorize them to make the subscription and to levy taxes, and issue the bonds to meet the assessments thereon. Such is now the universal current of decisions, and the question has not been open to dispute in this State since the case of *St. Louis vs. Alexander*." (Page 510.)

To the objection of unconstitutionality of the law, because it imposed a tax to pay the bonds only on real estate, while the Constitution declared that "no property, real or personal, shall be exempt from taxation." The Court held that the tax could be levied as a special tax on the ground of benefits to the land, and held "that the section

in the constitution against exempting property from taxation had reference only to ordinary or general taxation," and that the tax provided by the act of 1868 is legal.

After an elaborate and exhaustive opinion involving every question touching the validity of bonds issued under this Act, of 1868, the Court concluded in these words:

"The County Court having made the subscription, the company is entitled to the bonds."

The bonds were issued and passed into the market for full value. 44 Mo. 504. (1869.)

In 1872, the validity of Township bonds issued under this Act was again presented to the judgment of the Supreme Court of Missouri. This was an action of trespass brought by one *Ranney*, a tax-payer, against *Bader*, the Collector of Cape Girardeau County, for the amount of money collected from the tax-payer to pay coupons due on Township bonds. The plaintiff's petition alleged "that the bonds are illegal and void, and were issued without any authority of law.

The petition of citizens asking an election, recited that the Iron Mountain, Cape Girardeau and Bloomfield Railroad Company, was authorized to construct a railroad along a certain line—describing it. It then asked the County Court to order an election, to determine whether the Township of Cape Girardeau, would subscribe thereto $150,000 on the terms stated. The Court, in making the order of election, submitted it, not as a proposition to subscribe to this particular compauy, but as a proposition, "for the purpose of constructing *a* railroad, commencing at the City of Cape Girardeau, running in a south-west direction to some desirable point on the State line." The route named is substantially the one indicated in the charter of said Company, which was referred to in the petition of the tax payers. (Page 601)

The Court in its opinion says:

"It (the order) provided for an election in accordance with the law controlling elections, required the necessary notices, and appointed judges. The election was regularly held, and 376 votes were cast for subscription, and 7 votes against it. The abstract of the vote was certified to the County Court, and thereupon it was ordered that the Court subscribe $150,000 in the name of the County, for and in behalf of the Cape Girardeau Township, to the capital stock of the Company, on the terms heretofore stated, which were set out in full. *The whole proceeding was strictly in pursuance of the statute.*" (See page 601.)

It was objected, that, as no particular railroad Company was designated in the order of the County Court, the proceeding was void for indefiniteness. The Supreme Court, on this point, said: "That is sufficiently certain which can be made certain; and this may be done either by express words, or by words which by reference can be reduced to a certainty." (See Page 602.)

Again: "There is no pretence that there was any other road in existence, or contemplated. The references and intention are unmistakable, and are sufficiently certain." (Page 603.)

The answer sets out the entire proceedings, preceding the issue of the bonds, and states the number of votes, "cast at the election—376 votes for, and 7 against the proposition, and the Court says: "As no other fault is found with the proceeding, and as every step taken seems to have been done in a formal and regular manner, I entertain no doubt about the validity of the subscription. The objections urged, are entirely too refined and technical." The decision is concurred in by all the judges. (See page 603.)

Ranney vs. Baeder, 50 Mo. 600. (1872.)

The question was again presented to the Supreme Court in 1873. The defendant in the case was indicted for steal-

ing a bond issued by Lawrence County for Pierce Township in said County. It was objected that the County could have no property in the bond. The Court overruled the objection, and said: "Although it was in reality a Township bond; that is, the Township was the real debtor in this bond, yet the County could become the owner of the bond, and would be the owner, as trustee, until the bond was delivered to the Railroad Company or to some purchaser thereof."

State vs. *Cunningham*, *51 Mo. 479*, (1873.)

It was presented again in the same year in the case of the *State vs. Sanderson*.

This was an application for injunction against the Collector of Pike County, Missouri, to prohibit him from collecting taxes levied to pay township bonds. It was instituted in the name of the State by the Prosecuting Attorney of the County, as authorized in that State.

It is stated, substantially, in the petition and in the brief of the Circuit Attorney, that the bonds were illegally issued, and are void—that two-thirds of the voters voting at the election, did not vote in favor of making the subscription—and that no power had been conferred on the County Court to issue the bonds, &c. While it is true that the case passed off on the objection of a want of proper parties to the proceeding, the Court used this language: "We may observe that the irregularities set up in regard to the election, would be no defense against the *bona fide* bondholders."

State ex. rel. v. Sanderson, *54 Mo. 203*, (1873.)

The question was indirectly presented again in the same year in the case of *Rubey v. Shain*, *54 Mo. 207*. In this case the validity of the Act of 1868, and of bonds when properly issued under it, is admitted throughout. The Court uses the following language: "On the

18th day of the same month, (December 1868,) a petition was presented to the County Court, under the Act of the 23d of March, 1868, signed by the necessary number of tax-payers of Hudson Township, requesting the Court to order a vote in said township, as to whether the township would take $ 40,000 of stock in said company. In June, 1869, the vote was taken and the requisite majority was obtained."

The next case in order was decided in 1874.

In February, 1869, twenty-five tax-payers of Prairie City Township, in Bates County, submitted to the County Court their petition for an election in said township to test the sense of the voters, as to whether the Township should subscribe $25,000, to be paid in bonds under the act of March 23, 1868. The election was ordered, and one of the conditions prescribed in the order and voted upon, was that "the proceeds of the bonds should be expended in building the road within the Township." The proceeding in this case, is a prayer for *mandamus* to compel the subscription and issue of the bonds in accordance with the vote of the township. The petition alleged a vote of ninety for and three against the proposed subscription, "which," the Court says, "were more than two-thirds of the qualified voters, as alleged in plaintiff's petition."

After the railroad was completed and in full operation through the township, the company applied to the County Court, for the first time, to subscribe the stock thus voted, and it being refused, this proceeding was taken to compel the subscription.

The Supreme Court, in denying the writ, expressly affirms the validity of the act, by admitting the power of the County Court to make it. The following language is used: "But although the County Court *was invested with authority to make the subscription*, it was not made; nor was it demanded until long after the road had

been constructed and in full operation through the township. The authority to make the subscription ceased as soon as the road was completed through the Township."

And again: "In my judgment, the authority for making the subscription had ceased before this application was made."

The road being completed, the Court thought that the proceeds of the bonds could not then be expended in building the road within the Township.

State ex. rel. v. County Court of Bates County, 57 Mo. 70.

The next case was decided in 1875 and is as follows:

The defendant was indicted, as Treasurer of Linn County, Missouri, for embezzling funds alleged to be the property of Jefferson Township in said County, the same havind been collected from the tax-payers of said Township and placed in his hands to pay coupons on bonds issued by the County for said Township. The lower Court quashed the count containing the above allegation, on the ground that the "Township was a body that had no authority under the law to own or hold property."

The Supreme Court says in its opinion: "It is true that the Township had no power to make independent contracts, and be bound in a separate capacity, but it was, nevertheless, a legal subdivision of the county—an organization for certain municipal purposes. The law under which the indebtedness accrued, for which the money was paid to satisfy the Township interest on its subscription of stock, was not a County liability. The name of the County was made use of as a medium, but the Township was exclusively required to provide for the payment of the interest and principal. The subscriptions were essentially Township subscriptions, and the bonds issued were Township

bonds, to all intents and purposes, and the County Courts were merely made use of as agencies to effectuate and carry out the object of the law."

"The money, it is alleged, came into the hands of defendant to pay the interest on the Township bonds; it was raised from taxes assessed on Township property, and it was property charged as Township property."

State v. Clarkson, 59 Mo. 149. (1875.)

In the meantime the question of the validity of bonds issued under this act was repeatedly presented to the Circuit Courts of the the U. S. sitting in Missouri, and especially in the case of *Jordan v. Cass County, 3 Dillon R.* 185, and *Harshman v. Bates County, 3 Dillon R.* 150, both decided in 1874.

In the former case, the petition set out the bonds in full and declared that they were issued under the Act of March 23, 1868, and the statement of the case is as follows:

"The County demurs to the petition on the ground that the bonds are not bonds of the County but of Mount Pleasant Township on which alone they are binding; that two-thirds of the qualified voters of the County did not assent to the issue thereof and that the Act of March 23, 1868, under which they purport to have been issued is unconstitutional." Article 11, § 14 of the Constitution of 1865 is quoted in the statement and in the opinion of the Court, and the Act of March 23, 1868 is thoroughly examined, and the question on the demurrer was the same as is now presented to this Court.

Judge Dillon delivered the opinion of the Court, and the following is copied therefrom:

"The act has been held constitutional by the Supreme Court of the State *(State ex. rel. vs. Linn County, 44 Mo. 505.)*, and it is our opinion that the Constitution of the State (Article 11, section 14), which prohibits the Legisla-

ture from authorizing any "*County, City or Town*" to subscribe to the stock of any Railroad Company, unless authorized by two-thirds of the qualified voters therein, does not prohibit the Legislature from authorizing *Township* aid to Railways, if two-thirds of the voters of the Township shall sanction the proposition. Whether the Legislature could authorize Township aid to Railways without the assent of two-thirds of the voters therein, need not be determined, for it has not undertaken to do so. The section of the Constitution above mentioned does not in terms limit the Legislative power, except as respects "Counties, Cities and Towns"; but other municipal creations would be within the mischief the Constitution intended to remedy, and hence, it would seem, within its spirit and meaning. Supposing this to be so, however, the only limitation on the Legislature would be that it could not authorize the aid by Township or by the people within them, without the popular sanction which the Constitution requires. It would not be a fair or a legitimate construction of the provisions of the Constitution to hold that it *absolutely* disabled the Legislature as respects municipal creations or civil divisions of the State not therein mentioned.

Treating the Act of 1868 as valid, the next question is: Whether the holder of the bonds issued in accordance with its provisions—that is, by the County Court *in the name of the County* on behalf of the Township, pursuant to a two-thirds vote of the citizens of the Township—can maintain an action thereon, for any purpose, against the County in whose name the bonds are made. * * * We are thus brought to the question whether a holder of bonds issued pursuant to the Act of March 23, 1868, may recover judgment thereon against the County in whose name they are issued, to be enforced, if necessary, not by an execution against the County but by *mandamus* against the County Court to compel it to levy upon the property in the Town-

ship the special tax which the law has enjoined as a duty upon it.

After some hesitation we have reached the conclusion that such an action will lie, and that this view will best carry out the design of the Legislature in the enactment in question. The expressed purpose of the statute was "to facilitate the construction of railroads in the State of Missouri," and to this end it provided for the issue of negotiable bonds, with coupons for interest attached. These were to be negotiated and sold, and, as Townships were not known to the law as corporate bodies, some provision must be made whereby payment could if necessary, be enforced. The Act met the difficulty arising from the non-incorporation of Townships by directing the bonds to be issued in the 'name of the County.' By the legislation of Missouri the County has a corporate or *quasi* corporate capacity, with limited power to contract and sue and be sued. *Wagner's Statutes, 407, 408.* * * *.

Upon the whole, our judgment is that the action is well brought against the County, that the County may make defense, but if the plaintiff shall be found entitled to recover he may have judgment against the County for his debt, damages and costs, to be enforced if necessary, by mandamus against the County Court, or the Judges thereof, to compel them to levy and collect a special tax according to the statute in such case provided, and not otherwise."

In the last case the same learned judge, having quoted the Constitutional provision, says: "And this requirement of a two-thirds vote as a condition of the right of any County, City or Town to take stock is also made in the enactments of the Legislature, passed in pursuance of the above-mentioned provision of the Constitution. (*Wag. Stat. 305, secs.* 17, 18.) And such a precedent vote is also required in the Township Railroad Act of March 23, 1868, under which the vote was taken and the bonds now before

the Court were issued. Accordingly the question was submitted to the voters of Mt. Pleasant Township, on the third day of May, 1870, whether they would subscribe," etc., "and the *requisite two-thirds of those voting at the election* voted therefor."

During this entire period the Legislature of the State was passing acts giving practical construction to these provisions of the Constitution

In 1869 the City of Chillicothe was authorized to borrow money for any purpose of public improvement, provided the ordinance therefor shall have been submitted to a vote of the qualified voters of said City, and "approved by two-thirds of the votes cast at any general or special election held in said City." *Laws of Mo.* 1869, *page 96*, *section* 18.

At the same session municipal Townships, Cities, Towns and Villages were authorized and empowered to subscribe to corporations for the purpose of building graded, gravelled or macadamized roads. The Act provided that whenever 20 persons, taxpayers and residents of any municipal Township, City, Town or Village shall petition the County Court, setting forth their desire, to subscribe to the capital stock of any graded, gravelled or macadamized road Company, it should be the duty of the County Court to order an election to be held to determine the question, "and if it shall appear, from the returns of such election, that not less than two-thirds of the qualified voters of such townships, towns or villages voting at such election are in favor of such subscription or appropriation, it shall be the duty of the County Court to make such subscription or appropriation in behalf of such towns, townships or villages according to the terms or conditions thereof; and if such conditions provide for the issue of bonds in payment of such subscription, the County Court shall issue such bonds in the name of the County, with coupons for interest attached; but the rate of interest shall not exceed ten per cent.; and the same shall

be delivered to the Secretary of such Company or such other person as the Court shall designate," etc.

It also provides, that the County Court should levy, from time to time, and cause to be collected a special tax in such Township, City. town or village for the purpose of paying the subscription or appropriation, according to its terms. It is made the duty of the County Treasurer to obtain the special tax as levied from the Collector, and apply the same to the payment of the principal and interest of the bonds thus issued.

1 Wagner's Stat. (1872,) 321 a. b.

At the same session, Kansas City was authorized to borrow money for public purposes, provided the ordinance shall have been submitted to the qualified voters thereof and approved by two-thirds of such voters "voting" at any general or special election held in said City.

Laws of Missouri, (1870,) *page 327,* § 5.

At the session of 1872, the City of Lexington was authorized to provide for paying the amount of a railroad stock subscription by the issue of bonds, provided the issue thereof should be "sanctioned by two-thirds of the legal voters of said City cast at such election."

Acts of 1872, *page 430,* §17.

At the same session, the town of Carthage was authorized to issue bonds in the same manner, "provided that two-thirds of the qualified voters voting at said election shall assent thereto." *Same Book, page 348,* §1.

At the same session, the town of Holden was authorized to issue bonds "for any purposes beneficial for the interest and prosperity of said town," provided that the proposition shall have been first determined upon by a two-thirds majority of all the votes cast at a special election to be called by the Council and held for that purpose.

To show that the Legislature of the State regarded the terms "two-thirds of the qualified voters voting at the election" and "two-thirds of the qualified voters of the municipality" to mean the same thing, reference may be made to the following acts passed during the same sesion of the Legislature:

The City of Oregon was authorized to make a railroad stock subscription, in 1870, "if two-thirds or more than two-thirds of the qualified voters of said City shall vote in favor of such ordinance."

Acts of 1870, page 406, §60.

The City of Booneville was, in 1872, authorized to loan the credit of the City if sanctioned "by the qualified voters of the City in the manner provided by Section 14, Article 11 of the Constitution of the State of Missouri."

Laws of 1872, *page* 303.

The City of Brunswick, at the same session, was authorized to make appropriations of money for public purposes provided "a two-thirds majority of the qualified voters of the City shall consent thereto at an election held for the purpose."

Laws of 1872, page 315.

During the time that these Township bonds were being voted and issued in Missouri, *to-wit*: in December, 1872, this Court passed directly upon the question involved. A Township of Champaign County, Illinois, was authorized to take stock in a Railroad Company provided "a majority of the legal voters of said Township "expressed themselves at the election in favor of the subscription. It was admitted that only a majority of those voting had assented, and the point was expressly made by defendant's Counsel that a majority of all the voters was required. The opinion proceeds as follows:

"Responsive to the first objection, it is insisted by the plaintiff that the Legislature in adopting the phrase 'legal voters of the Township' intended to require only a majority of the legal voters of the Township voting at the election notified and held to ascertain whether the proposition to subscribe to the stock of the Company should be adopted or rejected; and the Court is of the opinion that such is the true meaning of the enactment, as the question would necessarily be determined by a count of ballots. Tested by these considerations it is clear that an election was held within the meaning of the Act of the Legislature, and that a majority of the legal voters of the Township had voted in favor of the subscription, as the proofs show; that a meeting was called and held, and that a majority of the legal voters voting at the meeting voted in favor of the proposition."

St. Joseph Township v. Rogers, 16 *Wall.* 644, (1872.)

Finally in 1875 a Convention was assembled in Missouri for the purpose of framing a new Constitution for the State. The 6th section of article 9 of the Constitution so framed impliedly admits the legality of Township bonds issued under the Act of March 23, 1868, by providing that "no County, Township, City or other municipality shall hereafter become a subscriber to the capital stock of any railroad or other corporation or association, or make any appropriation or donation or loan its credit thereto." No Township bonds had been issued except under the Act of March 23, 1868 and the macadamized road Act of 1870; and the same provisions of law existed for taking the vote of the people under both of said Acts. It is, therefore, clear that up to 1876 all departments of the State government of Missouri recognized and admitted the validity of Township bonds issued under the Act of March 23, 1868.

The first authoritative declaration intimating their invalidity came from this Court in May, 1876.

Harshman vs. Bates County, 97 *U. S.* 569.

In the Spring of 1877, the Supreme Court of Missouri had an opportunity to declare the Township act void but failed to do so. An attempt was made by *mandamus* to compel the issue of Township bonds by the County Court of Davis County, in compliance with a vote of the voters of the Township. The *mandamus* was refused, not because the Act of 1868 is void, but solely on the ground of a failure of the Railroad Company to comply with the conditions prescribed in the vote of the people at the polls.

The Court uses the following language: "The power of the voters of a Township is purely statutory, and exhausts itself when such voters give expression at the polls of their assent to, or dissent from, the proposed subscription. Any subsequent action on their part therefore being unknown to the law, is possessed of no legal validity and can, by no means, absolve the Railroad Company from the conditions which were imposed at the time the vote to subscribe was taken."

This, though not expressly affirming the validity of the Township Act, at least negatively or impliedly re-affirms it, by asserting the binding efficacy of the vote of the qualified voters of a Township, under the statute. The decision was made with the Harshman case before the Court; and the Court was urged to declare the Act invalid, and thus to end the case, which it thus positively refused to do.

This latter opinion was delivered in the spring of 1877, and substantially re-affirms the former cases extending from the Linn County case decided in 1869. See also *State ex rel. Hopkins vs. County Court Cooper County*, 64 *Mo.* 170.

While these opinions were the law of the State, the Townships issued and sold four millions of bonds, and secured thereby not less than one thousand miles of railroad in Missouri.

The next case in the order of time was that of *Cass County vs. Johnson*, decided by this Court at its October Term, 1877, reported in 95 U. S., 360, in which this Court decided that the Township Aid Act was not repugnant to the Constitution of Missouri adopted in 1865, and that bonds issued according to the provisions of that Act are valid, and the collection thereof could be enforced by *mandamus* against the County Court issuing them. The case of Harshman against Bates County, so far as it conflicted with this opinion, was expressly overruled. It was not until the summer of 1878 that the Supreme Court of Missouri uudertook to hold the Act of March 23, 1868 void. Bonds issued under said Act were held to be invalid in two cases decided at the same term.

See State ex rel. Woodson vs. Brassfield, 67 Mo. 331;

Webb vs. Lafayette County, 67 Mo. 353.

Both cases were decided by a divided Court. Four Judges sat in the first case, and they were equally divided. In the second case, all the Judges (five in number) were on the bench and the opinion was reached by three Judges against the opinions of two. The following is the dissenting opinion of Napton, Justice, in which Hough, Justice, concurred:

"Whatever might have been the construction of the article in the Constitution of 1865, in regard to Township subscriptions and bonds under the Act of 1868, we have a legislative, judicial and popular construction of it which, in my judgment, make it no longer an open question. The Legislature gave an interpretation to the Constitution by the Act of 1868, the highest judicial tribunal in the State sanctioned that construction in the Linn County case; the Convention of 1875 representing, as we assume, the will of the people, recognized this construction; and now this Court is called on at the end of ten years from the passage

of this Act, and after the investment of millions of dollars in bonds issued on the faith of legislative, judicial and popular interpretation, to declare the Act void, and all the money invested in bonds authorized by it, to have been thrown away. I prefer to decline this responsibility. Had I been on the bench when the Linn County case was determined and bonds were ordered to be issued, thereby affirming the Constitutionality of the Act of 1868, my opinion might have been otherwise than the one announced. As the opportunity did not offer, I can't say, with propriety, what my opinion would have been—but I can say now that whatever it might have been, I would never, subsequently to the action of the Counties in conformity to the opinion of the Court and the investment of capitalists in the bonds issued, undertake to set up any individual opinion in opposition to the declared sanction of the Court. The matter was *res adjudicata* so far as bondholders, who invested on the faith of it, were concerned, and so this Court declared in *State to the use of Neal vs. Saline County*, *48 Mo. 391*, and so this Court unanimously decided in *State vs. Miller*, 50 *Mo.* 129. In fact the Constitutionality of the Act of 1868, upon the point now urged, was never questioned in this State until the decision of the Supreme Court of the United States in *Harshman vs. Bates County*, a decision which that Court retracted on the first opportunity. So that when the present case arose the law had the sanction of the Legislature, the State judiciary, the Federal judiciary and the Constitution of 1875. Legislative, judicial and popular interpretation all correspond, and on the faith of this construction, bonds to the amount of millions of dollars were purchased by our citizens, and the only effect of the present decision is to annul their title, whilst the citizens of other States and foreigners may still proceed to get judgments and collect them.

I, therefore, dissent *in toto* from the decision"

The next decision in order was one made by Judges

Dillon and Krekel, in the Western District of Missouri, on the 18th day of April, 1878. (*C. L. J. vol. 6, page 345, Foote v. Johnson County.*) The language of the Court in that case is as follows:

"The Supreme Court of the United States considers questions arising upon negotiable municipal bonds issued under State authority, to relate to commercial securities and not to present questions of mere local law; and where such securities have been issued before any decision of the State tribunals denying the validity of the act authorizing the issue, the Supreme Court has declared that in protecting constitutional rights of creditors it will decide for itself whether, under the Constitution and laws of the State, such securities are valid or void. (*Township of Pine Grove v. Talcott, 19 Wall.*, 666; *Olcott vs. Supervisors, 16 Wall.*, 678.) The cases last cited related to bonds which had been issued under acts which had been declared unconstitutional by the Supreme Court of Michigan in the one case, and by the Supreme Court of Wisconsin in the other, *after* the bonds in question had been issued. The duty of the Supreme Court of the United States to follow the judgment of the Supreme Court of the State was strongly urged by Counsel. But the Supreme Court was of a different opinion, and in the case first cited, Mr. Justice Swayne expresses the views of the Court on the subject in language so emphatic and decisive, as not to be mistaken. He says:

"The question before us belongs to the domain of general jurisprudence. In this class of cases this Court is not bound by the judgment of the Courts of the State where the cases arise. It must hear and determine for itself. Here commercial securities are involved. When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The Legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And

during the period covered by their enactment, neither of the other departments of the government of the State lifted its voice against them. The acquiescence was universal. The general understanding of the legal profession throughout the country is believed to have been that they were valid. The National Constitution forbids the States to pass laws impairing the obligation of contracts. In cases properly brought before us, that end can be accomplished unwarrantably no more by judicial decisions than by legislation. Were we to yield in cases like this to the authority of the decisions of the Courts of the respective States, we should abdicate the performance of one of the most important duties with which this tribunal is charged and disappoint the wise and salutary policy of the framers of the Constitution in providing for the creation of an independent Federal judiciary. The exercise of our appellate jurisdiction would be but a solemn mockery."

Afterwards, *to-wit:* on May 16, 1879, an act was passed by the Legislature, and approved, to authorize Counties, Cities, Townships and towns to fund all or any part of their bonded indebtedness and unpaid subscriptions to the capital stock of any Railroad Company, as had been previously done by the Acts of March 27, 1875, April 12, 1877, and April 14, 1877.

Laws of Missouri, 1879, *page*, 48.

Since the passage of this Act, municipal authorities in the State, including Townships, have been engaged in the very creditable work of funding and paying their debts in cases where they are able to do so, and compromising them and issuing bonds for a less amount in cases where they are not able to pay all.

The cases of *Olcott v. Supervisors*, 16 *Wall*, 678 (*decided in* 1872) was one in which Fond du Lac County, Wisconsin, had ordered a subscription to the Sheboygan Railroad Company under authority of an act passed by the

General Assembly in 1867 to construct a railroad from Fond du Lac to Ripon in that State. After the bonds had been issued and sold in the market but before the trial of the case, inthe Circuit Court of the United States for the Eastern District of Wisconsin, the Supreme Court of that State, in the case of *Whiting v. Fond du Lac County*, 25 Wis., 188, held the act under which the bonds were issued to be void, and this decision was afterwards affirmed in *Curtis v. Whipple*, 24 Wis., 350. On the authority of this case of Whiting decided by the State Supreme Court, the Circuit Court of the United States held the bonds to be void; the case was then appealed to this Court, and in its opinion this Court used the following language:

"The nature of taxation, what uses are public and what are private, and the extent of unrestricted Legislative powers, are matters which, like questions of commercial law, no State Court can conclusively determine for us. This consideration alone satisfies our minds that *Whiting v. Fond du Lac County* furnishes no rule which should control our judgment, though the case is undoubtedly entitled to great respect.

There is another consideration that leads directly to the same conclusion. This Court has always ruled that if a contract when made was valid under the Constitution and laws of a State, as they have been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by this Court as establishing its invalidity, such a rule is based upon the highest principles of justice. Parties have a right to contract, and they do contract in view of the law as declared to them when their engagements are formed. Nothing can justify us in holding them to any other rule If, then,the doctrine asserted in *Whiting vs. Fond du Lac County* is inconsistent with what was the recognized law of the State when the County orders

ed by all departments of the Government and administered in its Courts of Justice, its validity and obligation cannot be impaired by any subsequent action of the Legislature or decisions of its Courts altering the construction of of the law."

Ohio L. I. & T. Co. v. *Debolt*,, 16 *How.* 432. *State v. Miller*, *50 Mo.* 129.

"It cannot be expected that this Court will follow every such oscillation from whatever cause arising that may possibly occur. The earlier decisions we think, are sustained by reason and authority. They are in harmony with the adjudications of 16 States of the Union. * * * Bonds and coupons like these, by universal commercial usage and consent, have all the qualities of commercial paper. * * * We are not unmindful of the importance of uniformity in the decisions of this Court and those of the highest local Courts giving constructions to the laws and Constitution of their own States. It is a settled rule of this Court, in such cases to follow the decision of the State Courts, but there have been heretofore in the judicial history of this Court, (as doubtless there will be hereafter,) many exceptional cases. We shall never immolate truth, justice and the law because the State tribunal has erected the altar and decreed the sacrifice."

1 *Wall 296.*

EXAMINATION OF THE LATE OPINIONS OF THE SUPREME COURT OF MISSOURI.

In a late opinion of the Supreme Court of Missouri declaring unconstitutional the Township Aid Act, it is insisted by the Court that the true test of the number of voters in any municipality must have been determined by the registration lists. That this claim is utterly impossible, the following propositions will show:

1. During the entire period while the Convention which framed the Constitution of 1865 was in session not less than one-half of those qualified to vote under the instrument framed were absent from their respective Counties, engaged tn the "volunteer armies of the State and of the United States;" and it is expressly provided (Art. 2, Sec. 21,) that all such persons, "whether within or without the State, shall *without registration* be entitled to vote at any election." And it is a notorious fact that the Constitution itself would have been defeated by the popular vote but for the poll books sent in by Missouri regiments abroad. Coustitution, art. 13, sec. 2.

The Convention during its session adopted an ordinance for the organization of the Missouri militia, by which the entire body of male inhabitants between the ages of eighteen and forty-five were sworn to loyalty and mustered into service; and any person refusing the oath "shall be considered and treated as a prisoner of war." See ordinance, secs. 1, 2 and 13.

It is safe to say, that, in some Counties of the State, even when the Convention adjourned, three-fourths of the voters were under arms. All these could vote without registration. Can it be possible under these circumstances, that the Convention intended to declare that the registration lists should be taken as a test of the the number of qualified voters? Suppose the Legislature had declared in the Township Act that a two-thirds majority of the "registered" vote should be required, and a case should occur where the registered vote unanimously favored subscription and the soldiers' vote, double in number and equally "qualified" should be unanimous against it, would the Court accept this as the true interpretation of the Constitution?

2. Neither the Constitution nor the laws passed in pursuance thereof undertook to make registration lists evi-

dence of the number of qualified voters in any County or precinct.

These lists simply enable the person presenting himself, to vote, without further proof of qualification. Constitution, 1 Wagner Stat. 39, art. 2, sec. 4. The Constitution is silent as to the evidence necessary to establish the number of "qualified voters" in a district. It is therefore competent for the Legislature to declare the rule.

3. Registration under the law was required only biennially, and all deaths and removals of registered voters must have been deducted from the registered lists in order to determine the number of qualified voters left thereon. No provision of law was made or could be made to ascertain these deaths and removals; and in a community so changeable as that of Missouri, pouring out a constant stream of emigration to the West, it is insisted that an *actual* vote at any given period was a better test of the number of qualified voters, than a registered list prepared perhaps nearly two years before.

4. The Constitution (art. 3, sec. 17) disqualified all persons, as voters, who made wagers on the result of the election; and the laws (Session Acts 1868, p. 137, sec. 32) expressly authorized the judges of election to reject the ballots of such persons, although registered, as qualified voters; and no list or record of such rejections was required to be made or kept.

5. Registration in a district different from that of the voter's residence, or registration in a false name, or in more than one district, disqualified the voter (see section 40 of the same act) and hence the additional absurdity of making a registered list conclusive of a fact, which must, in the very nature of things, be incorrect. Its only purpose was to give the right *prima facie* to the voter to cast his ballot. It could not guarantee that none should die, that none should emigrate and none should disqualify themselves before the election.

The object of the Constitution was to obtain the assent of two-thirds of the actual, living, resident voters, the body politic, at the moment, and not two-thirds of a registered list which might represent more or less than the whole number of qualified voters.

It is not sufficient to say that those voting may be less than those registered. It is equally true that the number constitutionally authorized to vote—"the qualified voters"—may be twice or thrice the number registered. How, then, can the registration list be accepted as a test? The Courts must avoid constructions leading to absurdities or impossibilities.

6. The Constitution left the Legislature to adopt a system of registration or not, and even gave it power to suspend or repeal all provisions of the Constitution touching registration, after a given time. In other words, it was intended that registration should be temporary. Art. 2, sec. 25. Elections must be permanent. Could it have been designed that this uncertain, evanescent, repealable provision, should be established as a fixed standard to measure that which was intended to outlive it? What would be the standard when registration ceased to exist?

This view is fully confirmed by the opinion of the Supreme Court of Missouri in the case of *Zeiler vs. Chapman*, rendered at the January Term, 1874. This case arose under the new Constitution and after registration had been adopted and put in force. The statement of the case as developed in the opinion of the Court is as follows:

"Chapman, the contestee, received a majority of the votes cast in the County, and, upon the returns, was declared elected and duly commissioned as Treasurer. The returns included 139 votes cast for him in Dover precinct, whereas the registration books at that precinct only showed about 30 voters who were registered. Excluding the non-registered votes at this precinct, Chapman did not have a

majority of the votes unless 291 voters who were returned as 'rejected voters' and who voted for him, were to be counted."

Upon this statement of fact, the Court proceeded:

"We think the decision of the Court (the Circuit Court) was right on this point, although the voters had taken the oath of loyalty and had been duly registered. The judges of election had still the right under the law to reject them, and if they were improperly rejected, that should have been shown by the party claiming an improper and illegal rejection." *Zeiler vs. Chapman*, 54 *Mo.* 502.

In the case of *Webb* v. *Lafayette County*, 67 *Mo. 354*, (the particular case in which the unconstitutionality of the Township Aid Act was asserted) it is decided that the Legislature cannot authorize Townships to subscribe to the capital stock of corporations and issue bonds without first declaring them municipal corporations; and the learned Judge, delivering the opinion of the Court, proceeds:

"While the decisions of Courts of the highest character in three-fourths of the States have established the right of State Legislature, unless forbiden by organic law, to exercise the extraordinary power authorizing municipal corporations to impose taxes and contract debts for the purpose of constructing railways, the doctrine was, in most cases, dissented from by eminent judges, and has always met with much professional disapproval. * * * But the question whether the power existed in the Legislature to confer the right upon any other than a municipal or *quasi* municipal corporation is not of that character, and we are inclined to deny that such power existed, either in the Constitution of 1820 or that of 1865."

The Honorable Court, in using this language, must certainly have been oblivious of the questions decided, in the case of the *State of Missouri to the use of Neal v. Saline*

County, at the August term, 1871 and reported in 48 Mo. 390. This case arose under the Constitution of 1820, and the bonds then before the Court had been issued by the County Court of Saline County for one of the municipal Townships of the County combined with a part of another Township, and it was not pretended that the Townships or either of them had been incorporated by the Legislature. The Court in delivering its opinion, said:

"The liability of municipal and of *quasi* municipal corporations for the acts of their lawful agents in issuing negotiable bonds has been considered by this Court upon various occasions, and the subject was elaborately discussed at our last March Term in *Steins v. Franklin County*, (*ante p. 167.*) The doctrines there affirmed have always been recognized by us and are founded upon the broadest principles of justice. These bonds are treated like negotiable commercial paper, and, after they have been transferred in the usual course of business, the authority to execute and issue them is almost the only question open to consideration. The question of authority necessarily arises from the fact that they are executed by agents, and we have only to consider what constitutes authority. * * I am of the opinion that as to those who have advanced their money on the faith of the action of such authorities, the Townships interested in the railroads are concluded. A submission was had, a majority voted for the railroad, and there does not appear to have been any actual imposition as to the object of the vote; no fraud is claimed, the County Court ignored the irregularity and issued the bonds; a few of them came into the relator's hands for value. Now, in all honesty and fairness, should he suffer from the blunders of the Court? Clearly not; but if there is any loss, it should fall upon those who authorized the Court to act for them, though the authority was more general and indefinite than the law contemplated." The "irregularity" referred to by Court in this opinion is explained in 45 Mo.

242, and consisted of the fact that the law required that in the order of the County Court submitting a proposition for railroad subscription to the people, the precise amount of the subscription should be stated. In this case the order did not specify the amount.

The Honorable Court seems to have been equally oblivious of the questions discussed and settled by the case of *State vs. The Linn County Court* already referred to. The latter case arose under the Constitution of 1865. On page 510 of the volume (44), the question is pre sented as follows:

"As to the first ground; that the Township is not a corporation nor even a *quasi* corporation and has no authority to make the bonds and that, consequently, they would be the bonds of Linn County, I do not think the objection is insuperable. The Township is a legal subdivision of the County, is an organization for certain municipal purposes but it has no power by itself, to make independent contracts or to become bound in its separate capacity. The law has not invested it with that power; it forms an integral part of the County, and the County, to a certain extent, controls and acts for it. * * * It is true, the County Court is made the medium through which the bonds were to be issued, and they were to be issued in the name of the County. This is done, I suppose, because the Townships have no distinct and independent political organization. But still the law requires that the subscription should be made by the Court in behalf of the Township, and it provides for the payment of the interest and principal by the Township exclusively. The mode of subjecting the property in the Townships made liable for the payment of the taxes is already pointed out. * * * The bonds are not, therefore, in any sense County bonds; the subscriptions are essentially Township subscriptions, and the bonds are, to all intents and purposes, Township bonds; and the County

Courts and the Counties named are merely made use of as agents to effectuate and carry out the object."

After showing that the power existed in the Constitution of 1820 to authorize such subscription the Court proceeds:

"The new Constitution (1865) has not abridged this power. It only requires a different mode of proceeding, and that two-thirds of the qualified voters shall assent thereto before any subscription shall be authorized to be made."

It thus appears that this question which is now arrayed as a formidable objection to the Township Act was twice decided directly against the view now taken by this Court, the first time in 1869, and afterwards in 1871.

In this case of *Webb vs. Lafayette County*, the Act of 1868 is further denounced as unconstitutional, because of the 5th section therein, which provides for the application of the taxes which may be levied upon any railroad built under the provisions of the Act; first, to the payment of the subscription, and afterwards, to the school fund of the corporation or *quasi* corporation making the subscription. It is argued that this 5th section of the Act contravenes the provision of the State Constitution of 1865 which declares that "the credit of the State shall not be given or loaned in aid of any person, association or corporation." It is difficult to determine how a simple provision prohibiting the State from taking stock in a railroad company can be construed as a limitation upon the power to tax or to refrain from taxing, in any manner the Legislature may see fit.

It will be observed that this provision did not attempt to control the taxes upon property already in existence; it provided simply for the disposal of taxes to be levied upon property not yet constructed in the State. The State may make a contract not to exercise the taxing power or to ex-

ercise it only in a certain manner, and with respect to a particular subject.

New Jersey vs. Wilson, 7 Cranch, 164;

Jefferson Branch Bank vs. Skelly, 1 Black, 436;

Piqua Branch Bank vs. Knoop, 16 How. 369;

Dodge vs. Woolsey, 18 How. 331;

A State Legislature may exercise all powers which are properly legislative, unless they are forbidden by the State or National Constitution. This is a principal that has never been called in question.

Railroad Company vs. County of Otoe, 16. Wall 673.

The prohibition contained in the Constitution of Missouri and referred to by the local Court, is directed only against the issue of State bonds to Railroad Companies, either by loan, gift or stock subscription. It does not affect the power of taxation or restrict the rights of eminent domaine. The Act of 1868, does, in no manner, directly or indirectly, authorize the giving or loaning of the State's credit. State Constitutions usually contain provisions that no person shall be compelled to support any place of worship, or contribute to the maintenance of any religious sect or the support of any teacher of religion. Are such provisions ever construed to prevent legislative acts exempting church property from taxation?

Suppose the Missouri Constitution prohibiting, as it did, a loan of State aid to railroads, had been silent as to municipal loans; can it be doubted that the Legislature was restrained from authorizing municipalities to take stock in such companies or to loan their credit? Such an argument was advanced in this Court and met by the opinion in 16 *Wall.* 667, where it is said the power "is not only plain in reason, but is established by a number and weight of authorities beyond what can be adduced in support of almost any other legal proposition."

The chief point of objection made, however, against the constitutionality of this Act in the late decisions of the Supreme Court of Missouri consists in the fact that the Act of the Legislature only requires two-thirds of the voters voting instead of two-thirds of all.

It has already been shown: 1. That the Legislative act is precisely the same as the constitutional provision; that such construction has been universal by the Courts—State and National; (see Appendix to this brief,) that such has been the practice under the Constitution of the State of Missouri at all elections in said State since the adoption of the Constitution of 1865; the judges of election certified nothing except the result ascertained by votes taken on the day of election and depositedin the ballot box; no other test was ever required and no provision made for ascertaining or reporting any other than the result of the ballots cast; all elections were determined and all officers installed into office upon the majority asascertained upon the actual count of ballots cast into the ballot box.

"We conclude, therefore, that the Supreme Court of Missouri, when it decided the case of *State vs. Linn County*, and held the law in question to be Constitutional, did not overlook the objection which is now made, but considered it settled by previous adjudications. That case is, therefor, to be considered as conclusive upon the question."

Cass County vs. Johnson, 5 O. 369.

"Prior decisions of the State Court were in accordance with the decisions of this Court, and as those decisions were supposed to be correct expositions of the law of the State at the period when these bonds were issued, the latter adjudications cannot control the judgment in this case."

Supervisors vs. *Schenck, 5 Wall. 785.*

2. Whatever may have been the true meaning of the Constitution and whatever may have been the defects of

the Act of 1868, it is now too late to question the validity of bonds issued under it. A State Constitution must receive an interpretation according to the sense in which the people are supposed to understand its language. The entire history of the State in all its departments of Government shows the acquiescence of the people in the construction given the Act as early as 1868. A long series of Legislative Acts and an uninterrupted line of decisions by the Supreme Court of Missouri show beyond all question that the late conclusions of the Supreme Court cannot be followed without perpetrating the grossest outrage upon private rights.

"Where solemn determinations, acquiesced in, have set tled precise cases and the rule of property, they ought, for the sake of certainty, to be observed."

Lord Mansfield, in 1 Burr. 119.

"It is more important to have the rule settled than to determine what the rule shall be."

Lord Ellenborough, in 2 East, 302.

"The Court should state whether the point involved is such as to have become the rule of property so that titles have been acquired in reliance upon it, and whether vested rights will be disturbed by any change "

Cooley on Const. Lim. p. 52.

"It is only where they (State Constitutions and laws) have been construed differently at different times that in cases like this, we have adopted as a rule of action the first decision and rejected the last This has been done on the ground that rights obtained on the strength of the former decisions are not to be lost by a change of opinion in the Court."

Elmwood v. Marcy, 2 Otto, 289, (294).

3. The Circuit Courts of the United States in Missouri, for a long series of years, and the Supreme Court of the

United States, in the case of *Cass County v. Johnson*, affirmed the validity of the Act of 1868, and upheld securities issued under its provisions before the Supreme Court of Missouri declared it to be unconstitutional; and, according to the repeated decisions of this Court in such cases, its decisions will not be changed in order to conform to State adjudications subsequently made. The bonds issued are commercial securities, they are complete on their face, they are in the hands of *bona fide* purchasers for value, and the authorities are absolutely estopped from denying their validity.

In one of the cases they have received the endorsement of an Executive officer of the State declaring their validity and this declaration is endorsed upon the back of each bond; and in both cases the bonds contain sufficient recitals of their validity under the Constitution and laws of the State; in such a case, this Court cannot do otherwise than uphold the validity of the bonds.

4. The bonds in question being commercial securities, and recognized as valid when issued: and this Court having held them valid before any adverse decision by the local Courts, this Court must decide for itself.

"Attention is drawn to the fact that in a recent case, not yet reported, the Supreme Court of the State (Illinois) have held that these bonds are void, even in the hands of an innocent holder, but inasmuch as the power to issue the bonds was fully conferred by law, the question of validity in the hands of innocent holders, without notice, is a question of commercial law where the State adjudications, atthough entitled to great respect do not furnish the rule of decision in this Court."

Supervisors vs. Schenck, 5 Wall. 772.
Swift vs. Tyson, 16 Peters 1.

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Attorneys for Plaintiffs-in-error.

APPENDIX.

"The decisions of the Supreme Court of Missouri, commencing with the Linn County case in 1868 and continuing down to 1878, in which the constitutionality of the Act of March 23, 1868 and the validity of bonds issued under it were in question, are supported by the decisions not only of this Court but by nine-tenths of the State Courts of the Union."

McCrary on Elections, section 183.
Dillon on Mun. Corp., section 215.
Damon v. Granby. 2 Pick., 345–355.
Williams v. Lunenberg, 21 *Pick.*, 75.
The Church Case, 5 Robert (*N. Y.*) 649.
1st Parish v. Steins, 21 *Pick.*, 148.
People v. Warfield, 20 Ills. 163, (1868).
People v. Garner, 47 *Ills.*, 246, (1868).
Melvin et al. v. Lisensby, 72 *Ills.*, 63, (1877).
People v. Wyman. 48 *Ills.*, 263.
Railroad v. Davidson Co., 1 *Sneed*, (*Tenn.*) 692.
Taylor v. Taylor, 10 *Minn.*, 107.
Gillispie v. Palmer, 20 *Wis.*, 544.
State v. Woodford, 15 *Kas* , 600.
Reiger v. Commissioners, 70 *N. C.*, 319

In Warfield's case (decided in 1858), the Constitution of Illinois, adopted in 1848, had provided "that no County seat shall be removed until the point to which it is proposed to be removed shall have been fixed by law and a majority of the voters of the County shall have voted in favor of its removal to such point." Under this Constitution, the Legislature passed an act authorizing the re-

moval of County seats when approved by a majority of those voting on the question. In a case presented, the Supreme Court of that State used the following language:

"We understand it to assume, and such, we believe, was the understanding of its framers: that the voters of the County referred to were the voters who should vote at the election authorized by it. If we go beyond this and inquire whether there were other voters in the County who were detained from the election by absence or sickness, or who voluntarily absented themselves from the polls we should introduce an interminable inquiry and invite contests in elections of the most harassing and baneful character, if we did not destroy all the practical benefits of laws passed under these provisions of the Constitution. We hold, therefore, that a majority of the legal voters cast at this election is sufficient to determine the relocation of the County seat."

The case of *Garner* (reported in 47 Ills.) involves a similar question. The Constitution had provided for Township organization "whenever a majority of the voters in such County at any general election shall so determine." The Legislature in carrying out this provision enacted, "that a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county." 2 *Ills. Stat.* 1856, *page* 1135, § 4.

The Supreme Court, in a case before it, said: "If we take the vote actually polled as being evidence of the number of the voters of the County, then the means are plain and easy of application, but if any other mode be resorted to, there must result great inconvenience, uncertainty and delay. It is stated that the registry of the vote immediately before the election in 1865 affords a more reliable rule; we fail to see that, and its result in this case is that 158 votes were cast by persons whose names were not on the registry list; it thus appears, to that extent, it was certainly incorrect, and, for aught we know, those failing to vote

(whose names were registered) may not have been legal voters. * * * We may well conclude that names were, on the other hand, retained on the registry list who were not legal voters—persons having left the town, County or State. We, therefore, regard the registry list as affording no more or better evidence than the poll books. * * * We must hold that the vote cast is *prima facie* evidence not only of the result of the election but also of the number of legal voters in the County; and that this presumption will be acted upon until it is rebutted; and that the registry list did not rebut or overcome the presumption."

In *Taylor's* case (10 *Minn.*) the Constitution required that "all laws changing County lines, before taking effect, shall be submitted to the electors of the Counties to be affected thereby, * * * and be adopted by a majority of such electors." The Legislature passed an act in the language of the Constitution to remove the County seat of Chisago County; it was objected that less than a majority of the electors had voted on the question. The Supreme Court said: "The law presumes that every citizen does his duty, and in the eye of the law those present and voting at such election constituted the electors of the County. This construction effectuates the purposes of the framers of said section and makes it speak a sensible and consistent language, and we think, therefore, it is the true one. No reason was here given why an absolute majority should be given, nor has a precedent been cited or a single instance in any State where such absolute majority is required, and we think no such reason can be given or precedent cited."

In *Reiger's* case, the town of Beaufort, N. C., was authorized to issue bonds when sanctioned "by a majority of said voters qualified to vote for Commissioners." It was admitted on an agreed case that less than a majority of all the voters qualified to vote did appear and vote for the subscription. The Supreme Court said:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1879.

NO. 150.

SMEDLEY DARLINGTON, Plaintiff in Error,

vs.

THE COUNTY OF JACKSON, Defendant in Error.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

BRIEF FOR DEFENDANT IN ERROR.

JOHN C. GAGE, Attorney.

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BRIEF FOR DEFENDANT IN ERROR.

In the above case Darlington, a citizen of the State of Pennsylvania, sued the County of Jackson, in the State of Missouri, on certain overdue interest coupons on bonds issued by the County Court of said county to a railroad corporation organized under the laws of the State of Missouri. The petition, in proper form, alleged that the bonds were issued under and in pursuance of an act of the General Assembly of the State of Missouri, entitled, "An Act to facilitate the construction of railroads in the State of Missouri," approved March 23, 1868, for and in behalf of Kaw township, a municipal township in said county, to aid in building the railroad named; and that the issuing of said bonds had been authorized by a vote of more

than two-thirds of the tax-payers of said township at an election duly held for that purpose; that the bonds were negotiable in form, and that plaintiff was the *bona fide* holder for value of the bonds named and the coupons sued on.

To this petition the defendant county demurred generally. The only ground of demurrer was the alleged unconstitutionality of the act of the General Assembly referred to, which is known as *The Township Aid Act.*

This demurrer was sustained by the Circuit Court upon the authority of the decision of this Court in the case of *Harshman vs. Bates County*, 92 *U. S.*, 569, holding the Township Aid Act unconstitutional. This the plaintiff alleges to have been erroneous, and the question of the constitutionality of that act is the only question in the case. The Township Aid Act is as follows:

AN ACT to facilitate the construction of Railroads in the State of Missouri.

Be it enacted by the General Assembly of the State of Missouri as follows:

SECTION 1. Whenever twenty-five persons, tax-payers and residents, in any municipal township, for election purposes, in any county in this State, shall petition the County Court of such county, setting forth their desire as a township to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through, or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made, it shall be the duty of the County Court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted and returns made in accordance with the law controlling general and special elections; and if it shall appear from the returns of such election that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the County Court to make such subscription in behalf of such township according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the County Court shall issue such bonds in the name of the county, with coupons for interest attached; but the rate of interest shall not exceed ten per cent. per annum; and the same shall be delivered to the railroad company.

SEC. 2. In order to meet the payments on account of the subscription to the stock, according to its terms, or to pay the interest and principal on any bond which may be issued on account of such subscription, the County Court shall, from time to time, levy and cause to be collected, in the same manner as

county taxes, a special tax, which shall be levied on all the real estate lying within the township making the subscription, in accordance with the valuation then last made by the county assessor for county purposes.

SEC. 3. The county treasurer shall be authorized and required to receive and collect, of the sheriff of the county, the income from the tax provided in the previous section, and to apply the same to the payment of the stock subscription according to its terms, or to the payments of interest and principal on the bonds, should any be issued in payment of such subscription; he shall pay all interest on such bonds, out of any money in the treasury collected for this purpose by the tax so levied, as the same becomes due, and also the bonds as they mature, which shall be cancelled by the County Court, and this service shall be considered a part of his duty as county treasurer.

SEC. 4. Persons paying taxes to the stock subscription, made in accordance with the provisions of this act, or the bonds issued in payment of such subscription, shall receive from the collector a certificate, setting forth, in a definite manner, the facts, and such certificates, in sums of one hundred dollars, shall be convertible into the stock of the railroad company receiving the subscription, and the County Court shall hold the stock subscribed in behalf of any township in trust for such taxpayers, to be transferred as they become entitled to it; and all persons residing in said township, or owning property subject to taxation therein, if they shall have in good faith subscribed to the capital stock of the railroad company receiving the subscription of such township, and paid assessments on the same, as they have been made by the company, shall, to the extent of such subscription, receive credit on their tax, levied in such township, to pay such railroad subscription.

SEC. 5. In all cases hereafter where a railroad or branch railroad in this State shall be built, in whole or in part, by subscriptions to its stock by counties, cities, or townships, the proceeds of all State and county taxes levied upon such railroad company or branch so built, or the property thereof, shall be paid into the treasury of the counties where collected, and the county treasurers shall apportion the same, according to their several subscriptions, to such counties, cities, or townships so subscribing stock, until the whole amount of such subscription is refunded to them; and such sums so apportioned shall be paid over to the county or city treasurer and applied to the payment of the interest and principal of the bonds issued by such county or city on account of their subscription stock, as aforesaid, if any are outstanding, and if not it shall by them be placed to the credit of the school fund in such county, city, or township.

SEC. 6. This act shall take effect and be in force from and after its passage.

Approved March 23, 1868.

The Constitution of Missouri, in force at the time of the passage of this act, and the issue of the bonds in question, that of 1865, contained the following provisions:

ARTICLE XI.

SEC. XIII. The credit of the State shall not be given or loaned in aid of any person, association, or corporation; nor shall the State hereafter become a stockholder in any corporation or association, except for the purpose of securing loans heretofore extended to certain railroad corporations by the State.

XIV. The General Assembly shall not authorize any county, city, or town to become a stockholder in or to loan its credit to any company, association, or corporation, unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto.

ARTICLE II.

SEC. IV. The General Assembly shall immediately provide, by law, for a complete and uniform registration, by election districts, of the names of qualified voters in this State; which registration shall be evidence of the qualifications of all registered voters to vote at any election thereafter held; but no person shall be excluded from voting at any election on account of not being registered, until the General Assembly shall have passed an act of registration, and the same shall have been carried into effect; after which no person shall vote unless his name shall have been registered at least ten days before the day of election; and the fact of such registration shall be no otherwise shown than by the register, or an authentic copy thereof, certified to the judges of election by the registering officer or officers, or other constituted authority.

On December 16, 1865, an act, passed by the General Assembly, in conformity with the above requirement of the Constitution, was approved, which, by its terms, was to be put in operation during the year 1866, and remained in force and operation until after the issue of the bonds in question. *General Statutes of Mo.*, 1865, *p.* 904.

At the October term, 1877, this Court, in the case of *Johnston vs. Cass County*, 95 *U. S.*, 360, overruled the case of *Harshman vs. Bates County* so far as it held the Township Aid Act to be unconstitutional because in violation of Section XIV of Article XI above cited, holding that in several decisions of the Supreme Court of Missouri a construction had been placed upon the words "qualified voters," as used in that section, under

which the Township Aid Act could not be considered a violation of that section.

At its April term, 1878, the Supreme Court of Missouri, in the cases of *The State ex rel. Woodson vs. Brassfield*, 67 Mo., 332, and *Webb vs. Lafayette County*, *id.*, 353, considered the same question, reviewed the Missouri decisions relied on by this Court in giving its construction to Section XIV, Article XI, declared that the effect of those decisions was not, as supposed by this Court, such as to warrant the construction given, but that, on the other hand, the effect of the decisions of the Supreme Court of Missouri was the exact opposite, and such as to render the Township Aid Act a violation of said Section XIV, and decided that said act was a violation of both Sections, XIII and XIV, and was consequently unconstitutional and void. In *The State ex rel. vs. Brassfield*, Henry, J. delivering the opinion of the Court, said:

"If the language of the Constitution and that of the Statute mean the same thing, that is an end of the controversy. If all the voters who vote at an election are, in law, all the qualified voters of the election district, then there is no conflict between the Constitution and the law. * * * The case of *Bassett vs. The Mayor of St. Joseph*, 37 Mo., 272, and *The State vs. Binder*, 38 Mo., 456, are not in point here. In the first of those cases the Court said, 'We think it was sufficient that two-thirds who voted at the special election, authorized for the express purpose of determining that question, on public notice duly given, voted in favor of the proposition. * * * There would appear to be no other practicable way in which the matter could be determined.' The authority in that case was given by an act of the legislature, and no constitutional question was involved. While there may have been 'no other practicable way in which the matter could be determined,' in that no difficulty existed in this case. The same Constitution which required the assent of two-thirds of the qualified voters to authorize a subscription for the capital stock of a railroad company by a town, city, or county, provided for 'a complete and uniform registration, by election districts, of the names of the qualified voters in this State, which registration shall be evidence of the qualification of all registered voters to vote at any election thereafter held.' * * * The legislature passed an act to enforce these requirements of the Constitution, and from the date of its approval to

that of its repeal, there was 'a practicable way' of ascertaining the number of qualified voters in every township in the State.

* * * * * * * * * * * * * *

"The Supreme Court of the United States, in *county of Cass vs. Johnston*, said: '*In State vs. Sutterfield, the question was as to the construction of another clause in the constitution, and the decision was placed expressly on the ground of a difference between the two provisions.*' This is an entire mistake. Judge Napton did not, in that opinion, allude, even in the remotest terms, to the 14th section of article XI. In *Cass County vs. Johnston*, there was a singular confounding of constitutional provisions and legislatiove enactments." * * "In not one of the cases cited in that opinion from the Missouri Reports was the constitutionality of the act of 1868 directly passed upon. In not one of them did this Court place a construction upon the constitutional provision involved in the case of *Cass county vs. Johnston.* In the Linn County case 44 Mo. 504, principally relied upon, *this Court did not consider the constitutionality of the act with respect to the number of votes it required to authorize a subscription*, and said nothing as to the proper construction of the constitutional provision in that regard. Mr. George W. Easley, counsel for the respondent in that case, whose brief is before me, contended that the act of 1868 was unconstitutional, because the bonds, if issued, would be an indebtedness of the county, and not of the township; because: 1st. the township had no authority to make the bonds; 2nd, the township was not a corporation. He did not, in his brief, nor did this Court, in its opinion, consider the question now under discussion, and the only case in which the construction of a similar provision of the constitution was directly considered by this Court, the Supreme Court of the United States, in *Cass County vs. Johnston*, brushes away, as if of no consequence, in comparrison with the other Missouri cases cited and relied upon. That Court entirely overlooked the palpable distinction between the two cases of *Bassett vs. the Mayor, etc.*, and the *State vs. Binder*, and the Sutterfield case, that the former involved the construction of statutes, and there was no question as to their conflict with the constitution, while the latter case was determined by a construction of a constitutional provision. These cases might be upheld on the grounds assigned by the Court, and the Sutterfield case stand as an interpretation of the constitutional provision, without overruling these cases in any respect. If the Linn County case and the Sutter-

field case are in conflict, it is singular that not one of the judges, all of whom concurred in both opinions, called the attention of his associates to the conflict.

We shall not review the numerous cases from other States relied upon by those who maintain contrary views from those here expressed. Some of them are in opposition to this opinion, but we prefer to follow the direct opinion of this Court on the question, because we are satisfied that it was rightly decided, and if the Sutterfield case was rightly decided the difference in the phraseology of the two sections of the constitution is too slight to justify a different construction of the one from that properly placed on the other."

Judge Hough, in his dissenting opinion after reviewing the cases relied upon in *Cass County vs. Johnston*, says in conclusion: "I do not think, therefore, that it can be justly claimed, that prior to the passage of the act of 1868, the rulings of this Court were to the effect that the list of voters voting at an election, was *conclusive* evidence of the number of qualified voters."

In *Webb vs. Lafayette County*, Norton, J. delivering the opinion of the Court says:

"It is also claimed that section 5 of the act of 1868 is void. * * * * * It will be perceived that this section applies all the State and County taxes which may be levied on a railroad constructed in whole or in part by a township subscription, first, to the payment of such subscription; second, to the payment of the bonds and interest; and third, after the payment of such bonds and interest to the school fund of such township: * * This section would seem to be obnoxious to both sections 13 and 14 article XI, of the constitution of 1865, in this, that, to the extent that the revenue derivable from a tax on such road and its property for county purposes, is taken from the county treasury and diverted to the payment of bonds issued for a township, every citizen of such county is made, in effect and in fact, to contribute that much more to the treasury of the county than they would otherwise have to pay, and thus a township subscription would be converted into a county subscription, not upon the vote of two-thirds of the qualified voters of the county, but on the vote of two-thirds of the voters of a township thereof. To give this provision effect would overthrow the very object of section 14, which was to prevent the citizens of a county from being taxed to pay a railroad subscription, except upon the as-

sent of two-thirds of the voters of such county." "To the extent that section 5 withdraws the State tax on such roads and applies it to the payment of a township subscription every citizen of the State. in effect and in fact, is required to pay a part of such subscription, when section 13 of the constitution declares 'that the credit of the State should not be given or loaned in aid of any person, association or corporation.' It is no answer to this to say that this is not giving or loaning the credit of the State. We agree that it is not done directly, but that it is done indirectly is clear. * * Can that be done indirectly which is forbidden to be done directly? If so, constitutional inhibitions accomplish nothing, and organic laws may be set at naught by the merest evasion. * * * * * * * *

The 5th section of the act of 1868 is the compensatory section of the act, and may be said to sustain the same relation to the whole act that the consideration clause in a contract sustains to the whole contract. * * * The 5th section of this act, being the part evidently intended to induce the subscription, the payment of which it provided for, we may reasonably presume that the General Assembly would never have passed the law with this section left out. Hence, as the provisions therein are connected in subject matter with the other provisions of the act, operate together, and are united in purpose, the whole act is contaminated with the vice of the 5th section and must fall with it."

POINTS AND AUTHORITIES.

I. The act of the General Assembly of the State of Missouri entitled "*An Act to Facilitate the Construction of Railroads in the State of Missouri,*" approved March 23, 1868, is in conflict with section 14 of article XI, of the constitution of Missouri in force at the time of the passage of said act and of the issue of the bonds sued on in this, that by the act the County Court was authorized to make the subscription and issue the bonds upon the assent of two-thirds of the voters '*voting at the election*' while the constitution required the assent of *two-thirds of the qualified voters* to authorize such subscription. The same constitution, section 4, article XI, provided for a '*complete and uniform registration*' of all the qualified voters of each election district, prior to every election and thereby furnished a test, which although perhaps not in all cases perfectly accurate, was nevertheless the legal test of the number of qualified voters in each district

at each election. The phrase 'two-thirds of the qualified voters' used in the constitution meant two-thirds of the qualified voters as shown by the registration list of the district or township. Registration, under that constitution was *qualification.*

State, ex rel. Woodson vs. Brassfield, 67 *Mo.*, 331.
Webb vs. Lafayette County, id., 354.
State, ex rel. vs. Sutterfield, 54 *Mo.*, 392.
Chester & Lenoir N. G. R. R. Co., et al. vs. Com. Coldwell County. 72 *North Carolina*, 487.
Hawkins et al. vs. Carrol County, 50 *Miss.*, 735.

The leading feature in this view of the case is the constitutional provision for the registration of the qualified voters, a feature which this Court failed to notice in its decision of the case of *Johnston vs. Cass County*. 95 U. S. 360. It may be that in the absence of any such provision or other better evidence the result of the election would be competent as *prima facie* evidence of the number of voters, as was held in the Missouri cases cited. It may be that in the absence of such provisions the result of the election ought to be and is, according to numerous decisions in other States, and perhaps in this Court, an absolute test of the number of voters beyond which no inquiry is necessary or can be had. The necessity of the case demands that there should be a test somewhere, an end of inquiry. This test of the voters voting at the election is very insufficient; a very inadequate indication of the actual number of voters in the precinct. It is well known that all the qualified voters never do actually vote at any one election, but in the absence of any other possible test, it may still be proper to adopt it. But when the constitution, the same instrument which requires the assent of two-thirds of the qualified voters, also provides for an official and complete list of the qualified voters, such necessity exists no longer, the circumstances are entirely changed, a better and higher grade of evidence is provided, a more accurate and legally an absolute test is furnished, and the lower grade of evidence and the more inadequate test is no longer permissible. If then the effect of the Missouri decisions cited by this Court in *Johnston vs. Cass County*, which were all rendered before the constitution of 1865, had been to the effect supposed by this Court, still the constitutional provision for a registration would have wiped them all out. It may be that parol evidence is competent as proof of a contract and a Court may have so

decided repeatedly but such decisions furnish no rule of law that when such contract is shown to have been reduced to writing parol evidence is still admissible to prove it. This Court in overlooking the registration provision lost sight of the entire question raised in *Johnston vs. Cass County.*

II. It will be claimed that the decision in *Johnston vs. Cass County*, must control this case. That decision ought not to be followed, for the following reasons:

1. Because, as already stated, the Court failed to consider the only question submitted, viz.: Whether the existence of the registration provision in the Constitution did not have the effect of changing the otherwise acknowledged effect of the phrase 'qualified voters.' The Court construed the phrase according to a rule established by numerous decisions, but never acknowledged in Missouri, and ignored the question whether the change of circumstances did not change the rule.

2. Because it was held in that case that the decision of the Supreme Court of Missouri in *The State vs. Linn County*, 44 Mo., 504, "*is conclusive upon this question, and, as a rule of State statutory and constitutional construction, is binding*" on this Court although it was admitted "*that the objection now made to the law was not presented or considered.*" In the case of *Boyd vs. Alabama*, 94 U. S., 645, this Court held as follows:

"It is true that, in a former case against the same defendant, upon an indictment of a similar kind, for a previous offence of setting up and carrying on a lottery, the Supreme Court of the State held that the statute in question constituted a contract, and that the repealing act was for that reason void. But in that case the only subject before the Court was the meaning of the statute—whether its provisions in their terms amounted to a contract which a subsequent enactment could not impair. The constitutionality of the act was not drawn in question; that was not denied.

"Courts seldom undertake, in any case, to pass upon the validity of legislation when the question is not made by the parties. Their habit is to meet questions of that kind when they are raised, but not to anticipate them. Until then, they will construe the acts presented for consideration, define their meaning, and enforce their provisions. The fact that acts may in this way have been often before the Court, is never deemed a reason for not subsequently considering their validity when

that question is presented. Previous adjudications upon other points do not operate as an estoppel against the parties in new cases; nor, conclude the Court, upon the constitutionality of the acts, because that point might have been raised and determined in the first instance."

The reason of this rule is obvious. The Constitution is the organic, fundamental law. Its construction in one way or another affects a great variety of questions, and is justly held by courts a matter of such importance that it is never entered upon except when absolutely necessary; and such construction is never implied. Yet, in this decision, it is said, "We conclude, therefore, that the Supreme Court of Missouri, when it decided the case of *The State vs. Linn County*, and held the law in question to be constitutional, did not overlook the objection which is now made, but considered it settled by previous adjudications." Is not this a total abandonment of that well established rule so strongly stated in *Boyd vs. Alabama?*

But for what reason was this rule abandoned, and the inference drawn from the silence of the Court in *The State vs. Linn County*, that this objection had not been overlooked? To answer this question, we must look to the opinion of the Court. In the first place, several decisions of the Supreme Court of Missouri, in which the Township Aid Act was construed, "and in no one (of which) was a suggestion by Court or counsel of its unconstitutionality," are cited. But this Court said, in *Boyd vs. Alabama*, "The fact that acts may have in this way been often before the Court, is never deemed a reason for not subsequently considering their validity when that question is raised." These decisions, therefore, constitute no reason, and no part of a reason, for the abandonment of the rule. The cases of *State vs. Winkelmeier*, 35 Mo., 103; *State vs. Mayor of St. Joseph*, 37 *id.*, 270, and *State vs. Binder*, 38 *id.*, 450, are then referred to. In these cases, if anywhere, the reason for disregarding the rule laid down in *Boyd vs. Alabama* is found, and yet we submit that this conclusion involves a strange misconstruction of those decisions. All these cases arose before the Constitution of 1865, containing the registration provision, went into effect, the former just before that Constitution was framed, and the two latter just after its adoption, and before the registration clause by its terms took effect. That all important consideration was then wanting. But those cases show that the decisions of the

Missouri Supreme Court were somewhat anomalous on this question. In *Rex vs. Foxcraft*, 2 Burr., 1017, the case was that of an election of town clerk. There were twenty-five equal voters in the burrough; twenty-one of whom assembled at the election, nine voted for Seagrave, twelve did not vote at all, and eleven protested against the election. Held that Seagrave having received a majority of the votes cast, was duly elected; or, in other words, that the majority of the voters voting was a majority of the voters of the burrough.

The authority of this case has been, it is believed, generally followed; but these Missouri decisions distinctly disaffirm and reject it. Lord Mansfield bases his opinion on the fact that twenty voters were present. "Whenever electors are present and don't vote at all (as they have done here), they virtually acquiese in the election made by those who do." Now, in the case of *State vs. Winkelmeier*, the very opposite of this is decided. There 13,000 voters were present and voted on other questions; 5,000 votes were cast for the proposition, 2,000 against it, and it was held that a majority of the voters had not voted for the proposition. In other words, those voting are not taken to be all the legal voters of the city; those present, not voting, are not held to acquiese.

In the two latter cases, of *State vs. Mayor of St. Joseph*, and *State vs. Binder*, the case of *State vs. Winkelmeier* is referred to and is not overruled; but it is held that *in the absence of other evidence*, such as was had in *State vs. Winkelmeier*, the result of the election may be shown as *evidence* of the number of voters. Never did the Supreme Court of Missouri, in these cases, or anywhere, intimate that the phrase "legal voters," or "qualified voters," meant those voting at a given election. On the other hand, it has always been held that the number of voters at an election might be shown as evidence of the number of legal or qualified voters only *in the absence of other evidence*. "Legal voters," and "qualified voters," have always been construed to mean, in Missouri, all the voters; those who do, and those who do not vote. These cases, therefore, instead of affording reason, or any part of reason, for disregarding the rule of *Boyd vs. Alabama*, are, on the other hand, the strongest possible authority for adhering to the rule.

3. Because the Supreme Court of Missouri, in the recent cases of *State ex rel. vs. Brassfield*, 67 Mo., 331, and *Webb vs. La-*

fayette County, id., 354, interpreting its own decisions, including all those cited, has declared and decided that in the case of *State vs. Linn County*, that Court did not consider the objection here made, and that the cases of *State vs. Mayor of St. Joseph*, and *State vs. Binder*, cannot be considered as giving reason for any such inference. It may be said that the Court were not unanimous in these cases, that two judges dissented; but upon this precise question there was no dissent, and one of the dissenting judges, Hough, J., in his opinion in the Brassfield case, points out more clearly than any of his colleagues the error of this Court in the case of *Johnston vs. Cass County*, in holding that ever before the passage of the Township Aid Act, in either of the cases referred to, the Supreme Court of Missouri had given utterance to the opinions attributed to it. He holds that the cases of *State vs. Winkelmeier*, *State vs. Mayor*, and *State vs. Binder*, are all in harmony, holding that the number of voters voting may or may not be evidence of the number of legal voters—will be in cases where no other evidence is to be had; will not be where such other evidence is found. Napton, J., in his dissenting opinion in the Lafayette county case, says, "Had I been on the bench when the Linn county case was determined, and bonds were ordered to be issued, thereby affirming the constitutionality of the act of 1868, my opinion might have been otherwise than the one announced." It does not occur to him that by these prior cases the Court was already committed to that opinion. Therefore, it is claimed, there was no dissent upon this question. These opinions of the Missouri Supreme Court are simply declaratory of their former utterances. Certainly if that Court may construe the statutes and Constitution of the State, and their constructions are, as is said by this Court, "a rule of State statutory and constitutional construction, and binding on us," much more may they interpret the meaning and effect of their own prior decisions.

4. Because this Court was in error in supposing that the case of *State, ex rel. vs. Sutterfield*, 54 Mo., 391, was decided "expressly on the ground of a difference between the two provisions;" that is, the provision regarding the removal of county seats, and that contained in Section 14 of Article XI. In the opinion of the Court in the Brassfield case this error is noticed. Judge Napton, in delivering the opinion of the Court in the Sutterfield case, referred to no such difference; did not even

refer to the 14th Section of Article XI, and it is plain that no such difference exists. Section 30, of Article IV, passed on in the Sutterfield case, was as follows: "The General Assembly shall have no power to remove the county seat of any county unless two-thirds of the qualified voters of the county, at a general election, shall vote in favor of such removal." The language of Section 14 is, "Unless two-thirds of the qualified voters of such county, city, or town, at a regular or special election to be held therein, shall assent thereto." Construing the former provision, in the Sutterfield case, the Court, Napton, J., delivering the opinion, says, "Our Constitution, in regard to the proposed removal of county seats, it seems to me, hardly admits of two constructions. * * * The number of voters required is specifically named, and there is no difficulty in ascertaining what that number is, since the Constitution provides for a registration, and points out who the qualified voters are." This is, in effect, holding that the provision for the registration of voters, being contained in the same Constitution, is part and parcel of this provision, and is referred to by it, and that this provision means the same as if it said, "Unless two-thirds of the qualified voters of the county, *as shown by the registration lists*, at a general election, shall vote for such removal." But if the former provision refers to the registration provision, certainly the latter does, for the language is identical in that respect, and expressed in full, it would read, "Unless two-thirds of the qualified voters of such county, city, or town, as shown by the registration lists thereof, at a regular or special election to be held therein, shall assent thereto." Could it be contended, if the provision did read thus, that a majority of two-thirds of the voters voting at the election could give the required assent? The importance of this consideration of the registration provision is still further alluded to in the opinion. Commenting on the two cases of *Bassett vs. Mayor*, 37 Mo., 270, and *State vs. Binder*, 38 Mo., 450, to which so much weight was attached by this Court in *Cass County vs. Johnston*, it is said: "But a reference to these cases will show that neither of them arose on the construction of a provision of the Constitution, or on the subject matter now under consideration. The act of the legislature referred to in the case of *Bassett vs. The Mayor, etc.*, required the question of borrowing money to be submitted to a vote of the qualified voters of St. Joseph, and required two-thirds of such votes to sanction the same. *It appeared that there*

was no registration of voters in the city, and the only guide to determine the number of qualified voters was the result of the last election which preceded the one in controversy." The registration provision had not yet gone into effect, and that fact was held to be sufficient to establish a substantial distinction between the cases, and to render the Bassett case inapplicable in cases arising under the Constitution, and when the registration provision was in force.

It is submitted therefore upon the authority of the Sutterfield case and for the reasons therein given, that these two cases of *Bassett vs. the Mayor*, or *State vs. Mayor of St. Joseph*, and *State vs. Binder*, have no application to cases arising under this constitution, are not to be considered in connection with *State vs. Linn County*, give no additional force or meaning to that decision, are entirely foreign to its subject matter, and that that case stands by itself, deciding only what it purports to decide, and that the Court did not, in that case consider the objection which is now made, or consider it settled by previous adjudications; but that on the other hand the cases of *State vs. Sutterfield*, *State vs. Brassfield*, and *Webb vs. Lafayette County*, do consider this precise question, hold this objection valid and "are conclusive upon this question, and as a rule of State Statutory and constitutional construction, binding" on this Court.

III. Section 5 of the Township Aid Act is a clear and palpable violation of both sections 13 and 14 of article XI, of the constitution, and the act is thereby rendered void. Under this section all proceeds of State and County taxes levied upon a railroad company which has received municipal aid, are to be used in paying the bonds issued for such subscription, whether the same be county, city or township bonds and when the bonds are paid off, in refunding to the township or county whatever it may have paid on account of its subscription. Thus a portion of the moneys of the State, the proceeds of all taxes the State can levy on the railroad are pledged and devoted to the payment of county, city and township subscriptions. The constitution, section 13, article XI, prohibits the giving or loaning of the credit of the State to any person, association or corporation and also prohibits State subscriptions to the stock of corporations. The credit of the State is thus given away. The effect of the 5th section is, that townships may make the subscriptions and the State and county shall pay the money.

It also violates section 14, in that it devotes the revenues of the county to the purposes of railroad aid upon the authority of a vote, not of the county but of the township. On these grounds the Supreme Court of Missouri, in *Webb vs. Lafaye te County*, 67 Mo., 361, held this act to be void. This objection is so palpable and decisive as to be unanswerable. The only answer vouchsafed by the plaintff in error is, that this is not a loaning or giving of State credit but a 'contract not to exercise the taxing power.' There is no contract not to tax, but there is a contract pledging the proceeds of the taxation in aid of railroads, the very thing the constitution sought to prevent. A contract not to tax the railroad would have been void under the constitution, section 16, article XI.

This question has never, until *Webb vs. Lafayette County* was decided, been considered by the Supreme Court of Missouri, or any other Court.

IV. The Supreme Court of Missouri has passed upon and decided this question and that decision is binding upon this Court. This act has been by that Court, for the precise reasons here alleged, held unconstitutional and void in the cases of *State ex rel. vs. Brassfield*, and *Webb vs. Lafayette County, supra.* These cases also hold that a similar construction had, in the case of *State vs. Sutterfield*, 54 Mo., 391, been given to a provision of the constitution, in this respect identical with the one under consideration, before the decision of this Court in *Johnston vs. Cass County*, and they further hold that there is no Missouri decision in existence in conflict with the views therein expressed. These decisions are constructions deliberately given by the supreme judicial authority of the State, upon the meaning of the provisions of the State constitution and the local law. These decisions, are themselves, equally with that constitution and the statutes, the law of the State. As such, they are binding on all other tribunals. *Fairfield vs. County of Gallatin, United States Supreme Court, October Term, 1879. South Ottawa vs. Perkins*, 94 U. S. 267. *Johnston vs. Cass County*, 95 U. S., 360.

It may be contended that this Court has, in other cases, such as *Township of Pine Grove vs. Talcott*, 19 Wall., 666. *Olcott, vs. Supervisors*, 16 Wall., 678, and others refused to be governed in cases of this nature, by the State decisions. This is an error, Those cases were different. There the questions were general "the nature of taxation, what uses are public and what are pri-

vate, and the extent of unrestricted legislative powers." These questions were declared questions that "belong to the domain of general jurisprudence." *Township of Pine Grove vs. Talcott.* "It is undoubtedly true, in general, that this Court does follow the decisions of the highest Courts of the State respecting local questions peculiar to themselves, or respecting the construction of their own constitution and laws. But it must be kept in mind that it is only decisions upon local questions, those which are peculiar to the several States, or adjudications upon the meaning of the constitution or statutes of a State which the Federal Courts adopt as rules for their own judgments. That *Whiting vs. Fond du Lac County* was not a determination of any question of local law is manifest. It is not claimed to have been that. But it is relied upon as having given a construction to the constitution of the State. Very plainly, however, such was not its character or effect. The question considered by the Court was not one of interpretation or construction. The meaning of no provision of the State constitution was considered or declared." *Olcott vs. the Supervisors*, 16 Wall., 689. To this class of cases, *Fairfield vs. Gallatin County*, *South Ottowa vs. Perkins*, and the present case do not belong. The questions here arising are purely questions of local law, the interpretation of the meaning of certain provisions of the State constitution, of an act of the State Legislature, and of certain decisions of the Supreme Court of the State. Nor is this a case "where the contract when made was valid under the constitution and laws of the State, as they had been previously expounded by its judicial tribunals." The Supreme Court of Missouri, in *Webb vs. Lafayette County*, says: If the constitutionality of this act had been heretofore fully presented and considered, and declared valid, thereby establishing a rule of property, we would hesitate long before overturning or unsettling it in any degree. We think this has not been done, and the case on which the claim is based is that of the *State ex rel. vs. Linn County*, 44 Mo., 504, in which the points now before us were neither made nor considered, and all that it decided was, that a bond issued under the terms of the act would not, in any sense, be a county, but to all intents and purposes, a township bond. The question before us was neither made or considered in that or any other case, and this is conceded by the Court, in the case of *Cass County vs. Johnston*, 95 U. S., 360, in which it is said that 'it is true that the objection now made to the law was in no case presented or considered.' In *State ex*

rel. vs. Brassfield, it is said:—"In not one of the cases cited in that opinion (*Cass County vs. Johnston*), from the Missouri Reports was the constitutionality of the act of 1868 directly passed upon. In not one of them did this Court place a construction upon the constitutional provisions involved in the case of *Cass County vs. Johnston*."

These two cases and the Sutterfield case are the only cases in which the Supreme Court of Missouri has ever passed upon the question now before this Court. These bonds cannot be said to have been "valid under the constitution and laws of the State, as they had been previously expounded by its judicial tribunals."

V. The defendant in error relies on what is termed a construction of the language of the constitutional provision by the legislative, executive, and judicial authorities of the State for twelve years after its its enactment.

As to the legislative construction, it might be asked what force can or ought to be given to it. The Constitution prohibits the legislature from doing certain acts; passing a given law. The legislature passes the law; it repeats the violation of the Constitution again and again. By so doing the constitutional prohibition is set at naught; *construed to be ineffectual.* The Constitution is the supreme law of the State; it is made to protect the people against the abuses, the irregularities, the oppressions of government. Shall the legislature, created by the same power that made the Constitution, created to be ruled and governed by it, be permitted to construe it away? The suggestion is a dangerous one.

Most of the acts cited as proof of such construction are city charters authorizing the issue of bonds for local improvements; the legislative power to authorize which is not limited by Section 14 of Article XI, of the Constitution. Such are the charters of Clarksville, Kansas City, Chillicothe, Carthage, Holden, and Brunswick. In other charters, those of Oregon, Booneville, St. Joseph, and in the general railroad law, and bridge company act, the language of the Constitution is adopted when an issue of bonds in aid of a corporation is authorized, and the constitutional majority, "two-thirds of the qualified voters," is required. Only three or four instances, among hundreds, can be found in which any violation of the Constitution can be claimed. As a rule, the legislatures, during these twelve years, in authorizing

the issue of bonds by municipalities, made this discrimination between those issued for general local improvements and those issued in aid of railroads, by providing that in the former case they might be issued when sanctioned by two-thirds of the qualified voters voting at the election; but in the latter requiring "two-thirds of the qualified voters." If there is any weight whatever to be attached to the legislative construction, this distinction, so uniformly observed, so rarely violated, is entirely on the side of the defendant in error.

Still less importance ought to be attached to what is called the "executive construction." Even courts do not, as a habit, pass upon constitutional questions unless directly raised by the parties. In this case, the construction claimed arises out of the act of the Auditor certifying that "the law had been complied with in the issue of the bonds." This did not mean that that law was constitutional.

As to the judicial construction claimed, it is to be remarked, in the first place, that under the rule laid down in *Boyd vs. Alabama*, no decision, and no number of decisions, wherein the precise objection here made was not raised and considered, ought to or can have any weight. Unless that rule be abandoned, it is vain to recount cases in which the question was *not* considered. The Supreme Court of Missouri unanimously hold that in no one of the cases cited was this question discussed, and so this Court held in *Johnston vs. Cass County*. There is no judicial construction favorable to the plaintiff in error. During this period the case of *State vs. Sutterfield* was decided, holding a similar law unconstitutional. The only judicial construction was adverse to the doctrine contended for.

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